

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32802
Docket No. SG-33551
98-3-96-3-791

The Third Division consisted of the regular members and in addition Referee James E. Yost when award was rendered.

(Brotherhood of Railroad Signalmen)
PARTIES TO DISPUTE: (
 (CSX Transportation, Inc. (former Baltimore and
 (Ohio Railroad Company)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (B&O):

Claim on behalf of R.E. Thomas, et al., for payment of an amount equal to the total hours worked by construction forces on the Chicago Division Central Region, from March 24 to May 12, 1995, account Carrier violated the current Signalmen's Agreement, particularly Agreement No. 15-18-94, when it used construction forces to perform maintenance work on the signal system, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15(95-246). BRS File Case No. 10020-B&O."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On March 24, 1995, Carrier assigned System Signal Construction Gang 7X15 to work with a Maintenance of Way System Tie and Surfacing Gang to replace track wires and rail connectors damaged during a major tie replacement and track resurfacing on its Chicago Division. On April 10, 1995, System Signal Construction Gang 7X14 joined Gang 7X15 in performance of the work.

The Organization filed claim on May 24, 1995, contending that the work involved is maintenance and repair reserved to local Signal Maintenance forces.

Carrier denied the claim on June 27, 1995, contending the Organization failed to identify the specific Agreement Rules(s) which allegedly support the claim; that there is no Rule in the B&O System Agreement prohibiting B&O System Signal Forces from restoring signal systems damaged during track restoration; that there was no violation of any provision of the B&O System Agreement; that restoring signal systems damaged during track restoration cannot be construed as maintenance work; and such assignment cannot be construed as one having a regular reporting point and territorial assignment on a district. Further, that Claimants suffered no loss as they were fully employed and not available to perform the work.

The Organization filed an appeal with Carrier's highest officer designated to receive such appeals on August 30, 1995, citing Signal System Construction Agreement No. 15-18-94, including Side Letter No. 2, taking the position that (1) the System Signal Construction Gang is restricted to construction work, (2) programmed track maintenance work is not construction work, and (3) it is signal maintenance work that has always been performed by Division Maintenance employees.

The appeal was denied on October 28, 1995, and conferenced on June 4 and 5, 1996. The parties being unable to adjust the claim, it is now before the Board for adjudication.

Agreement No. 15-18-94 was entered into by the parties in November 1994, and became effective December 1, 1994. Under the caption "Definitions" it states:

"Construction Work - That work which involves the installation of new equipment and systems and the major revision of existing systems, and not

that work which involves maintaining existing equipment or systems. Replacing existing systems as a result of flood, acts of God, derailment or other emergency may also be construction work.

System Signal Construction Gang - A gang used to perform year round construction work throughout the territory covered by the combined B&O Agreement."

The pertinent part of Side Letter No. 2 to Agreement No. 15-18-94 reads:

"As stated throughout the negotiations, it is not the Carrier's intent to eliminate independent Signal Maintainer Positions (Maintainers on WM) or Maintenance Gangs and establish System Signal Construction Gangs in their place. Should the Organization believe the Carrier to be violating the intent of this Agreement by undertaking the aforementioned, the Organization and the Carrier will meet to discuss the matter."

Based on the on-property record of handling, we find no evidence that Carrier's use of System Signal Construction forces was intended to eliminate independent Signal Maintainer positions or Maintenance Gangs. Therefore, Side Letter No. 2 to the Agreement is not pertinent to a decision in this case.

Contrary to argument of the Carrier, we find that the Organization identified Agreement No. 15-18-94 as the Agreement supporting its claim, and that Agreement seems to prohibit B&O System Signal Construction forces from performing work of replacing track wires and rail connectors damaged by track forces replacing ties and surfacing track. This is so for the reason that the definition of construction work contained in Agreement No. 15-18-94, supra, is clear and unambiguous in stating that construction work does not include "that work which involves maintaining existing equipment or systems."

We also conclude that the work of replacing track wires and connectors damaged by track forces is maintenance work. There is no difference between replacing damaged track wires and connectors than replacing a fuel pump or generator on a locomotive. It is maintenance work, not construction.

We also note that on two different occasions during the on-property handling, the Organization asserted that in the past the work here involved had always been performed by Division Maintenance employees, and "This is not, 'construction work,' this is and always has been, Maintenance work, on the B&O." Search of the record before the Board does not reveal that Carrier took issue with the statements or denied them during the on-property handling or in its Submission to the Board. This in itself strengthens the finding that the work involved is properly construed to be maintenance work.

The contention of the Carrier that the initial claim filed in this case was defective in that it did not specify dates and identify a Rule supporting the claim is without merit. The claim identified the Agreement as the B&O System Agreement, and specified the time claimed as all hours, straight time and overtime, worked by the Construction forces charged under identified work codes. Carrier understood which Agreement was involved and the time claimed as evidenced by its response dated June 27, 1995.

Having found that Agreement No. 15-18-94 was violated we now turn our attention to the remedy requested, i.e., divide equally amongst 25 Claimants the total compensation earned, including overtime, by all System Signal employees assigned to Gangs 7X14 and 7X15 charged to the work of replacing track wires and rail connectors damaged in the tie replacement and resurfacing work on the Chicago Division.

The record reveals that the 25 Claimants held regular assignments, but not all of them held regular assignments on the Chicago seniority district here involved. In fact, it appears that two of the Claimants are assigned to System Gangs.

To sustain the remedy requested, the Board would be awarding Claimants a windfall as each of them were regularly employed during the claim period. This the Board cannot do as we have no authority to award windfalls for Agreement violations.

The Board does have authority where the Agreement has been violated to award compensation equal to what the Claimants would have earned had Carrier not violated the Agreement. In the instant case, we believe that would be for the overtime worked by Signal Construction Gangs 7X14 and 7X15.

From the record of on-property handling before the Board, we are unable to determine that all 25 Claimants were adversely affected by Carrier's violation of the

Agreement. Therefore, we will remand the case to the property for the parties to meet and determine the Claimants who would have had a right to the work if not for the Agreement violation. In addition, the parties are to jointly determine the total compensation earned by employees assigned to Gangs 7X14 and 7X15 from overtime worked during the period March 24 to May 12, 1995, and to divide it equally between the Claimants determined to have had a right to the work if not for the Agreement violation.

Prior Awards cited by the parties as persuasive to their respective positions were reviewed and found not to be on point with the facts and Rules involved in this dispute.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 23rd day of September 1998.