

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36635
Docket No. SG-36115
03-3-00-3-293**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.**

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 W. M. Sheckles, M. T. Gaver, J. D. White, V. K. Kennedy, B. L. Watkins, M. A. Tarleton, T. E. Painter, J. L. Eagle, Jr., R. W. Graves, and D. P. Sweitzer for payment of 248 hours at the straight time rate, and 17 hours and 30 minutes at the time and one-half rate, to be divided equally among the Claimants, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, CSXT Labor Agreement No. 15-18-94, and Side Letter No. 2 of the November 17, 1994 Agreement, when beginning on January 24, through January 29, 1999, it permitted System Signal Construction Gangs, who are not covered by the B&O Agreement to perform signal maintenance work of erecting a refurbished signal mast at Pepco Interlocking and deprived the Claimants of the opportunity to perform this work. Carrier File No. 15 (99-96). BRS File Case No. 11381-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.

This claim protests the Carrier's use of System Signal Construction Gang (SSCG) 7XB7 rather than Baltimore West End Seniority District maintenance forces to install a refurbished signal mast at Pepco Interlocking on the Metropolitan Subdivision between January 24 and 29, 1999. It is primarily a Scope Rule dispute, with the Organization asserting that the work in issue was routine maintenance, rather than construction work, which may only be performed by District maintenance forces.

The Organization argues that the type of work performed is, and will always be, maintenance work, which is reserved to District maintenance forces and falls outside the definition of construction work found in the Agreement which is the only work properly assigned to SSCGs. It notes that this work was not related to a major revision of an existing system, and was not an emergency, because the signal system had already been made operational on January 21, 1999 after it had been damaged by track equipment. The Organization relies upon Third Division Award 32802 in arguing that its claim should be sustained.

The Carrier argues that the Scope Rule of the Agreement, which covers SSCGs as well as the Claimants, does not preserve this work to one group or the other, and that they are routinely used to augment each other's forces. It notes that the SSCG worked in conjunction with Signal Maintainers to replace the damaged signals as well as the B & B department, who built a retaining wall around the high signal. The Carrier asserts that this is a jurisdictional question between employees of the same craft in different classes, represented by the same Organization, and that the Organization has a heavy burden of establishing exclusivity in such cases, citing Third Division Awards 35843, 21495, 20425 and 13198. The Carrier contends that the Organization failed to prove that the work in question was routine maintenance work

that belonged exclusively to District personnel, and asserts that the disputed work was a major revision of an existing system, as evidenced by the length of time it took to replace the high CPL Signal that was knocked down and realign the other high signal that was leaning. The Carrier also argues that this is a duplicative and excessive claim, because the Organization filed three different claims on behalf of the same Claimants covering the same time period but different work, and asserts that the Claimants could not have worked their regular hours in addition to the numerous straight time and overtime hours encompassed within the claims during this period, requiring that the claim be denied.

A careful review of the record convinces the Board that the Organization failed to meet its burden of proving a violation of the Agreement in this case. As noted, in cases such as this involving a jurisdictional dispute between employees of the same craft in different classes represented by the same Organization, the burden of establishing exclusivity is more heavily upon the Petitioner. See Third Division Awards 35843 and 20425. While we do not believe that the Carrier established that an emergency existed justifying the need for construction forces under the definition contained in the Agreement (Third Division Award 32292) we do find that the Organization failed to establish that the type of work here involved, including rebuilding and realigning high signal masts damaged by track equipment, was exclusively reserved to District maintenance forces by Agreement language or practice. In fact, there was no rebuttal to the Carrier's suggestion that the SSCG was used herein to augment and aid District signal personnel in making the extensive repairs required.

Further, the history of the "maintenance" vs. "construction" work and "district" vs. "system" gangs dispute on this property, with claims filed by the Organization on behalf of each group, establishes that although CSXT Labor Agreement No. 15-18-94 specifically defines construction work to exclude routine maintenance of existing systems, nothing therein exclusively reserves such construction work to SSCGs to the exclusion of District Maintenance Gangs, nor non-routine maintenance work to District Maintenance Gangs alone. See Third Division Awards 33155 and 32599. In agreement with a vast majority of the Awards concerning this issue on this property, we conclude that, in the absence of the Organization proving that District Maintenance forces have performed this type of work to the exclusion of all other classes of Signalmen, the claim must fail.

Additionally, it appears that the Organization has attempted to gain compensation for these Claimants, who were fully employed during the claim period, for work on three separate projects within the same time period by filing overlapping claims on their behalf. There is no showing that the Claimants suffered a loss of work opportunity, or that there is justification for such unjust enrichment in any event.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

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

Dated at Chicago, Illinois, this 29th day of July 2003.