

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36862
Docket No. SG-36600
04-3-01-3-111**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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 W. J. Baudendistel, C. P. Heitzer, G. T. Keefe, C. M. Kreuzer, T. J. Rich, and J. E. Rusak for payment of 8 hours each at the straight time rate and 4 hours each at the time and one-half rate. Account Carrier violated the current Signalmen’s Agreement, particularly CSXT Labor Agreement No. 15-18-94, when on August 18, 1999 Carrier assigned a system construction team to replace a broken crossing gate mechanism at Central Avenue in Hamilton, Ohio. This action deprived the Claimants of the opportunity to perform this work. Carrier File No. 15(99-0233). BRS File Case No. 11600-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.

The facts are not in dispute. On August 18, 1999, the Carrier assigned a System Signal Construction team to replace a railroad crossing signal with a gate arm assembly. The Carrier did not utilize the Toledo-Indianapolis Maintenance Team to do the work.

The Organization filed claim on August 25, 1999 alleging violation of CSXT Labor Agreement No. 15-18-94. Specifically, the Organization argues that the repair to the crossing signal and gate arm was not construction work as per Agreement No. 15-18-94, but was maintenance work. The Organization argued in its on-property correspondence that:

"In this claim, the only damage to Signal equipment at the crossing was that a crossing signal and gate arm were replaced, this is MAINTENANCE work, not CONSTRUCTION work, this point was made to the Carrier when Agreement 15-18-94 was negotiated, the Carrier agreed with this BRS position."

The Carrier denied violation of the negotiated Agreement pertaining to the use of a System Construction Gang under these instant circumstances. It pointed out that the driver of a car suffered a heart attack while crossing the track, lost control of his vehicle, and crashed into the crossing signal. The Carrier further noted that the damage was sufficient to require flagging personnel for safety. It clearly noted that the system gang was in the area and was "dispatched to the scene to make necessary emergency repairs."

Following a review of the Agreement, the record on the property and the Awards cited by the parties, we are compelled to find no violation of the Agreement. CSXT Labor Agreement No. 15-18-94 defines construction work and states that "Replacing exiting systems as a result of flood, acts of God, derailment or other emergency may also be construction work." The Board finds Third Division Award 29214 directly on point with our conclusion when it notes that "the Federal Railroad

Administration ("FRA") has determined that a broken or a malfunctioning crossing protection is an emergency." As with Third Division Award 32292, we find nothing presented by the Organization to prove that this was not an emergency. Statements that only a road crossing signal was damaged are insufficient to negate the Carrier's position that this was an emergency. Lacking proof to refute the "emergency" nature of the repair, the Board finds no violation of the Agreement (Third Division Award 32292).

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 28th day of January 2004.