

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37109
Docket No. SG-37128
04-3-02-3-94**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(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 T. B. Able, W. E. Baudendistel, C. P. Heitzer, G. T. Keefe, C. M. Kreuzer and T. J. Rich for 320 hours at the Signalman's rate of pay and 110 hours at the Foreman's rate of pay to be divided equally among the Claimants, account Carrier violated the current Signalmen's Agreement, particularly CSXT Agreement No. 15-18-94, when it allowed construction forces to perform preparation work on the Indianapolis Subdivision and covering a shoulder cleaner, from October 30, 2000, to November 17, 2000, and deprived the Claimants the opportunity to perform this work. Carrier's File No. 15 (01-0059). General Chairman's File No. T/I-02-01. BRS File Case No. 11990-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 of the instant matter do not appear to be in dispute. Between October 30 and November 17, 2000, the Carrier used a System Signal Construction Gang to perform work on the Indianapolis Subdivision. Specifically, System Signal Construction Gang No. 7XF6, consisting of four Signalmen, prepared for completion of a major construction project covering a significant amount of territory where a large BMW System Production Gang was scheduled to perform tie and surfacing work. The disputed work included removing staples from track leads, removing fasteners for the termination tie shunts and marking the signal wires so that they would be visible for the track forces while doing their work.

By letter dated December 26, 2000, the Organization submitted its claim alleging that the Carrier violated CSXT Labor Agreement No. 15-18-94 because the work the System Signal Construction Gang performed, "... was preparation on the Indianapolis Sub-Division for a tie and surfacing unit. ..."

Thus, the issue in the instant case is whether the Carrier erred when it assigned a System Signal Construction Gang to complete work on the Indianapolis Subdivision. It is clear that CSXT Labor Agreement No. 15-18-94 specifies that System Signal Construction Gangs were established for the purpose of performing construction work rather than maintenance work.

The Organization takes the position that the Carrier was required to assign employees of the Toledo Indianapolis Maintenance Gang covering the Indianapolis Subdivision to the work in question because the tasks involved maintenance and not construction work. The Organization requests pay for the Claimants in the amount of 320 hours at the Signalman's rate of pay and 110 hours at the Foreman's rate of pay to be divided equally among the Claimants for this loss of work opportunity.

Conversely, the Carrier takes the position that it acted properly. CSXT Labor Agreement No. 15-18-94 provides for the use of System Signal Construction

Gangs when more than routine maintenance work is required or a major revision of an existing system is needed. In the instant situation, the system work included, among other tasks, removing hundreds of staples from track leads, removing hundreds of fasteners that hold the termination shunts to ties and marking signal wires as needed for a capital construction project. According to the Carrier, this was a major revision that allowed for the use of a System Signal Construction Gang.

The relevant language of CSXT Labor Agreement No. 15-18-94 provides as follows:

"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."

After a review of all evidence, the Board finds that it must agree with the Carrier. The burden of proof in this matter falls on the Organization to prove that the Carrier should have assigned a maintenance crew to the project. In a similar case, Third Division Award 33152, the Board ruled for the Carrier:

"In each of the claims involved in this case, a System Signal Construction Gang worked with a CSXT system Tie and Surfacing (T&S) Gang, replacing signal wires and rail connectors that were removed or damaged by the T&S Gang during the tie replacement project. The Claimants are all BRS-represented employees regularly assigned to Division Signal Maintenance Gang or District Signal Gang positions, who claim that the work of replacing bond strand and rail connectors ('STN or chicken head') 'is and always has been 'maintenance work' and is not 'construction work,' as that latter term is defined in Agreement No. 15-18-94. The Carrier denied the claims on several grounds, but primarily asserted that when such bond strand and rail connector work is done as part of a major system reconstruction and renovation, it is no violation of Agreement No. 15-18-94, Side Letter No. 2 to the 1994 Agreement or

any other contractual undertaking with the Organization for the Carrier to utilize System Signal Construction Gang employees to do that work.

The Organization's reliance upon Side Letter No. 2 to the 1994 Agreement to support all five claims is misplaced. The record establishes that none of the Claimants in the five separate claims was furloughed and, moreover, no Signalmen were furloughed on the 'B&O' territory during the months of June, July and August 1995. Each Claimant worked full time on each claim date and indeed, two of the Claimants in whose territory the track renovation work was performed worked alongside the T&S and System Construction Gangs performing the disputed work.

Nor does the language of Agreement No. 15-18-94 provide contractual support for these claims. To the contrary, the following definition of construction work in that Agreement expressly recognizes a distinction between 'the major revision of existing systems' and 'maintaining existing equipment or systems:'

'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.'

So far as we can tell from this record, the Carrier utilized the System Signal Construction Gangs on the claim dates in a manner consistent with the letter and spirit of that Agreement and Side Letter No. 2. For the foregoing reasons, all of the claims must be denied."

See Also Third Division Awards 36862, 36861, 36802.

In the instant case, the Carrier utilized the System Signal Construction Gang in a manner consistent with the intent of CSXT Labor Agreement No. 15-18-94. The work involved in this case was construction work, and therefore, it was appropriate to use a System Signal Construction Gang to perform the work. We find that the Organization has been unable to meet its burden of proof. Thus, the claim must be denied.

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 25th day of August 2004.