

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37121
Docket No. SG-37448
04-3-02-3-500

The Third Division consisted of the regular members and in addition Referee Nancy F. Eischen 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, Inc. (CSXT):

Claim on behalf of W. M. Sheckles, Jr., M. T. Gaver, V. K. Kennedy, B. L. Watkins, M. A. Tarleton, T. E. Painter, J. L. Eagle, Jr., R. W. Graves, for 420 hours at their straight time rates and 208 hours at their time and one-half rates to be divided equally among the Claimants, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule and CSXT Labor Agreement 15-18-94, when it allowed System Signal Construction Gang forces to perform maintenance work on the Metropolitan Subdivision between MP BA 1.0 and MP BA 8.3 from April 14 through May 31, 2001, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15(01-0142). General Chairman's File No. BWE-2-09-01. BRS File Case No. 12120-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 alleges a violation of the Scope Rule and CSXT Labor Agreement No. 15-18-94 when the Carrier assigned a System Signal Construction Gang ("SSCG") to repair signal equipment, signal circuits and to replace brittle bars, bond wires, track wires and bootlegs which had been disrupted or broken by a BMWE-represented System Production tie unit and rail gang. The track forces caused this damage while performing track and rail renovation work over approximately seven miles of right-of-way on the Metropolitan subdivision, during mid April through May 2001, as part of a track structure capitalization project.

The Claimants are all Baltimore West End Signalmen who claim that the work in question was "maintenance" work that belonged to them rather than "construction" work for members of the SSCG. Both groups of employees are covered by the scope of the CSXT/BRS schedule Agreement. Because the work was allegedly "maintenance" performed on their former B&O territory, the Claimants asserted it was improper for the SSCG employees to perform the work.

The Organization contends that the work in dispute was not construction work per the definition of construction work as contained in CSXT Labor Agreement No. 15-18-94. CSXT's position, on the other hand, is that CSXT Labor Agreement No. 15-18-94 provides for such use of System Signal Construction Gangs when more than routine maintenance is required and a major revision of existing systems is needed.

Pertinent to this case, CSXT Labor Agreement No. 15-18-94 reads 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.

* * *

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

In Third Division Award 33152 between these same parties, a case which is really not distinguishable on its facts or issues in any meaningful way from the present case, the Board held that the Carrier's use of a SSCG to follow a track maintenance gang and repair signal equipment damaged by the track forces during a major track renovation project was not a violation of CSXT Labor Agreement No. 15-18-94.

Nothing in the record of the present dispute persuades us that the same result should not apply in this case. See also Third Division Awards 36861, 36362, 36206, 36205, 33155, 32599, 29356, and 29518 among many others. Cf. Award 32802.

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.