

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37125
Docket No. SG-37560
04-3-02-3-648

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 J. Zurick, Jr., R. D. Hall and R. C. Strickler, for all straight time and overtime hours worked by the System Gang on August 15, 16 and 20, 2001, to be divided equally among the Claimants, account Carrier violated the current Signalmen's Agreement, particularly CSXT Labor Agreement No. 15-18-94, when it assigned a System Signal Construction Gang to perform maintenance work at the Mill Crossing, Somerset, Pennsylvania, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15(01-0208). General Chairman's File No. PEE-1-12-1. BRS File Case No. 12194-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 remove five poles and line wire and replace one road crossing as part of a bridge construction project. The Claimants are all Division Signalmen who claim that the work in question was "maintenance" work which 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.

As in so many other cases between these parties, the Organization contends that the work in dispute was not construction work per the definition of construction work as contained in the 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.

The Board has rendered more than two dozen cases addressing the seemingly endless stream of "construction vs. maintenance" disputes between these parties under the following paragraph of CSXT Labor Agreement No. 15-18-94:

"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."

Most of these cases are fact-driven, but among the scores of such decisions are some which try to set up some general principles to stem the flood of these kinds of cases. Among those, we find the following from Third Division Award 36633 to be most apt in this particular case:

"A careful review of the record convinces the Board that the Organization failed to meet its burden of proving a violation 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 on the Petitioner. See Third Division Awards 35843 and 20425. The Organization failed to establish that the type of work here involved . . . was exclusively reserved to District maintenance forces by Agreement language or practice.

* * *

Further, the history of the 'maintenance' vs. 'construction' work 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 work to SSCGs to the exclusion of District Maintenance Gangs, or visa versa. See Third Division Awards 33155 and 32599. In agreement with a vast majority of the Awards issued concerning this issue on this property, we conclude that, in the absence of the Organization proving that District Maintenance forces have performed this work to the exclusion of all other classes of Signalmen, the claim must fail."

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.

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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.