

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37194
Docket No. SG-37030
04-3-01-3-660**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers 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 that:

Claim on behalf of J. A. Rockwell, H. B. Simpson, D. W. Korom, J. R. Seiber, K. A. Pyles, G. P. Shaftic, B. Robinson, R. J. Oboczky, R. F. Selak, Sr., S. T. Jones, and S. D. Blake for payment of 1405.5 hours at the straight time rate and 228 hours at the time and one-half rate. This amount to be divided equally among the Claimants. Account Carrier violated the current Signalmen's Agreement, particularly CSXT Labor Agreement No. 15-18-94, when beginning on August 19, 2000 and continuing through September 29, 2000 Carrier allowed System Construction Force #7XA8 to perform maintenance work following the Maintenance of Way Tie and Surfacing Units. Carrier's action deprived the Claimants of the opportunity to perform this work. Carrier File No. 15 (01-0025). General Chairman's File No. AK-01-01. BRS File Case No. 11839-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.

On October 13, 2000, the Organization filed a claim on behalf of the Claimants, arguing that the Carrier violated the parties' Agreement when, on August 19 through September 29, 2000, it allowed System Signal Construction Gang 7XA8 to perform maintenance and repair work on the Claimants' territory. The work at issue involved repairing broken rail connectors and replacing bond strands damaged by track forces on the New Castle Subdivision between M.P. B.G. 58.4 and M.P. B.G. 190.0. The Carrier denied the claim.

The Organization contends that the Carrier improperly used employees assigned to System Signal Construction Gang 7XAB, instead of maintenance employees, to perform the maintenance work at issue. Because this work was maintenance work, and not new construction, it did not accrue to the System Signal Construction Gang under CSXT Labor Agreement No. 15-18-94. The Organization maintains that maintenance forces should have performed the work. The Organization argues that the Carrier now should be required to pay the Claimants 1405.5 hours at the straight-time rate, and 228 hours at the time and one-half rate, to be divided equally among the Claimants.

The Organization points out that the central issue in this matter is whether the work in question accrues to the maintenance employees covered by the Signalmen's Agreement, to the exclusion of System Signal Construction Gangs working under Labor CSXT Labor Agreement No. 15-18-94. The Organization asserts that CSXT Labor Agreement No. 15-18-94 specifically limits System Signal Construction Gangs to construction work on new installations and provides that System Signal Construction Gangs can be used for maintenance work only in connection with a construction project or in certain emergency situations. The Organization maintains that there was no indication that the work in question

involved a construction project or an emergency, and this clearly was maintenance work. The Organization therefore argues that the Carrier was prohibited from using the System Signal Construction Gang for this assignment.

The Organization goes on to assert that the work at issue typically consists of repairing, replacing, and reconnecting track wires, bond strands, and other signal equipment that was damaged. The work involves existing signal equipment. The Organization emphasizes that this type of work has been performed in the past by local forces, including Signal Maintainers and local signal maintenance gangs. The Organization argues that in this case, there is no dispute that the System Signal Construction Gangs were performing work on existing equipment and systems. The work consisted entirely of repairing existing signal equipment that was damaged during the track maintenance project, and CSXT Labor Agreement No. 15-18-94 specifies that such work does not accrue to the System Signal Construction Gangs. Clearly this work was maintenance work, and it should have been performed by signal maintenance forces, as in the past.

The Organization acknowledges that CSXT Labor Agreement No. 15-18-94 provides that System Signal Construction Gangs will be allowed to perform some repair work on existing systems, but points out that CSXT Labor Agreement No. 15-18-94 specifies that such work is limited to damage caused by floods, derailments, and other emergencies. The Organization contends that the work in question was planned maintenance work and did not involve an emergency, so the definition of construction work in CSXT Labor Agreement No. 15-18-94 cannot be extended to cover this work. In the absence of emergency conditions, the repair work on the existing signal system accrued to maintenance forces, and the Carrier did not have the option of diverting the work to System Signal Construction Gangs. The Organization therefore argues that the Carrier violated CSXT Labor Agreement No. 15-18-94 when it improperly deprived the Claimants of the opportunity to perform this work.

The Organization goes on to argue that the Carrier offered absolutely no evidence of its assertions regarding the Claimants' availability or that it was unable to assign the Claimants to perform this work during regular assigned work hours, as it has in the past. The Organization maintains that it must be held that the Claimants were available, and that they were improperly deprived of a work

opportunity that accrued to them by Agreement. When employees are deprived of the opportunity to perform work reserved to them under the Agreement, the employees lose the wages they would have earned for doing that same work, and they are entitled to recover for this loss.

The Carrier contends that the issue presented here previously has been decided, and the claim should be denied on the basis of stare decisis. The Carrier maintains that since CSXT Labor Agreement No. 15-18-94 became effective in 1994, this issue has been decided on the B&O property. The Carrier maintains that two of the three Awards rendered on this property, including the most recent, have upheld the Carrier's position that the Agreement specifically allows it to utilize System Signal Construction Gangs to perform the type of work at issue here. Moreover, no local Signalmen positions were eliminated as a result of the work at issue.

The Carrier argues that the unambiguous intent of CSXT Labor Agreement No. 15-18-94 is that the Carrier will have the right to utilize system forces to perform construction work. The Carrier asserts that the Organization's position that System Signal Construction Gangs cannot perform a major revision of an existing system contradicts the clear language of the Agreement, which provides that construction work involves the "installation of new equipment and systems and the major revisions of existing systems." The Carrier points out that when an entire territory (more than 130 miles) is identified as the target of a construction capital project, more than routine maintenance is required. The Carrier maintains that this was a significant project involving repair of replacement equipment, and CSXT Labor Agreement No. 15-18-94 expressly allows the use of System Signal Construction Gangs to perform such work. The Carrier contends that the only logical interpretation of the Agreement is that district forces are to perform routine maintenance of existing equipment, and System Signal Construction Gangs may be assigned to new installations and major revisions of existing systems. The Carrier argues that the work in question can only be described as a major revision of the existing equipment or systems, so the use of System Signal Construction Gangs was consistent with the purpose of CSXT Labor Agreement No. 15-18-94.

The Carrier asserts that this case is not about repairing a few broken rail connectors or replacing some damaged bond strand. Instead, this matter involves

replacing or repairing numerous signal items during a major project on more than 130 miles of territory, which requires an entirely different utilization of resources and dedication of manpower than is required for one Signal Maintainer to repair a small portion of damaged track.

The Carrier additionally contends that the Organization failed to establish that the work at issue was specifically reserved to the Claimants or any other employee represented by the Organization. To prevail in a theory of reservation of work, the Organization must show that specific Agreement language indicates such intent or exclusive performance on a system-wide basis. The Organization failed to make such a showing. The Carrier points out that an assignment of work to a job classification does not confer exclusivity of work to that position.

The Carrier maintains that the Board consistently has required that the petitioner must establish by probative evidence that certain work is exclusively to be performed by a specific class or craft. The Carrier asserts that in this case, the Organization has not proven that the work belonged only to the Claimants. The Organization offered no proof that only the Claimants, out of the entire signal craft, can do this work. Moreover, the Organization failed to prove that this work exclusively belongs to the Claimants by custom, practice, or tradition.

The Carrier then asserts that the Claimants were fully employed at all times prior to and including the claim dates, and they are merely seeking a "windfall" payment. The Claimants did not suffer any loss of compensation, so even if the Board should determine that the Agreement was violated, there is absolutely no basis to award the requested remedy. The Carrier argues that the Claimants are not entitled to any additional compensation.

The Board thoroughly reviewed the record and finds that the Organization failed to meet its burden of proof that the Carrier violated the Agreement when it assigned System Signal Construction Gangs to perform the work at issue in this case.

The facts in this case make it clear that this was not simply repairing a few broken rail connectors or replacing a small portion of bond strand, but instead the work involved replacing and repairing numerous pieces of signal equipment during

a major construction project covering more than 130 miles of territory. The project took six weeks and involved large BMW System Production Gangs. We find that the work was clearly the installation of new equipment and systems and the major revision of existing systems and was not simply replacing an occasional piece of equipment.

In Third Division Award 32292 the Board held that the “. . . use of a System Gang to repair damage caused by a derailment was an assignment consistent with the work for which such gangs were established, and did not violate the Agreement.” Moreover, in Third Division Award 33152 the Board denied multiple claims on behalf of Signal Maintainers on an adjoining seniority district. The Board pointed to the language of the Agreement, which states that construction work includes “. . . the major revision of existing systems and not work that involves maintaining existing equipment or systems . . .” and denied that claim.

The Board concludes that the work that took place here was clearly construction work and, as such, it was properly assigned to the System Signal Construction Gang under the terms of CSXT Labor Agreement No. 15-18-94. Therefore, 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 28th day of September 2004.