Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37520
Docket No. SG-37941
05-3-03-3-370

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc. (former Chicago and
(Eastern Illinois 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 E. A. Jarvis, R. A. Blacketer, T. J. Blakely, D. J. Norman, S. W. Denny, C. M. Holcomb, J. E. Batton, L. R. Cundiff, V. P. Thomas, M. R. Heck, T. A. Reed, R. J. Birkenfeld, S. F. Sievers, N. L. Blakely and M. L. Eldridge, for payment of 116.5 hours each at their respective rates, account Carrier violated the current Signalmen's Agreement, particularly Rules 1, 5, 10 and 20, and CSXT Labor Agreement No. 15-093-95. The violations occurred beginning on May 25, 2002, and continued through May 29, 2002, when Carrier allowed employees not covered under the terms of the C&EI Agreement to perform work that is covered under the C&EI Agreement associated with a Tie Surfacing Project. This action deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15-02-0147. General Chairman's File No. 02-25-1. BRS File Case No. 12635-C&EI."

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 July 23, 2002, the Organization presented a claim alleging that the Carrier violated Rules 1, 5, 10 and 20 of the Agreement and in addition violated the terms and conditions of the so-called "FLEXIBILITY AGREEMENT No. 15-093-95" when L&N System Gangs were used from May 25 to May 29, 2002, to work in conjunction with Signal Gangs on the C&EI in the performance of a large-scale signal renovation and construction project.

The claim as presented was denied by the Carrier insisting that the "Flexibility Agreement" was properly utilized in the performance of this major renovation and construction project. The Carrier also pointed out that all former C&EI employees were fully employed during this work period and were given first opportunity to any available overtime during the period of time the L&N employees were utilized.

The applicability of the so-called "Flexibility Agreement" between the parties in situations such as found in this case is not new or novel. There is a long line of precedent already in existence involving this "Flexibility Agreement." Third Division Award 33152 was issued in March 1999, and was reaffirmed in Third Division Awards 36681, 36686, 37333, and 37336. All have considered the type of claim as is present in this case. The scholarly conclusion expressed in Award 37333, to wit:

> "The judicial doctrines of stare decisis and res judicata do not apply strictly in labor-management arbitration. As a practical matter, however, where a prior decision covers the same parties, issues, facts and contract language, a subsequent arbitrator often will consider the interpretation laid down in the earlier Award as a binding part

> of the Agreement, unless and until the parties change the language. Even those who refuse to hold prior Awards binding would give them serious and weighty consideration when called upon to interpret the same language. It is not necessary that the subsequent arbitrator endorse all of the reasoning expressed in the earlier opinion. What is important is that the earlier Award contains a holding that is not palpably erroneous. In such circumstances arbitrators generally conclude that it would be a disservice to the parties to subject them to the unsettling effects of conflicting and inconsistent interpretations of the same contract language in the same set of circumstances.
>
> Based on all of the foregoing, we conclude that Third Division Award 33152 is authoritative precedent that supports the denial of the present claim."

applies with equal force and effect in this case.

The claim as presented in this dispute is 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 24th day of May 2005.