

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29697
Docket No. SG-29733
93-3-91-3-89

The Third Division consisted of the regular members and in addition Referee John C. Fletcher 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 CSXT, Inc. (Former B&O):

Claim on behalf of all Signal employees from local #94 of the Brotherhood of Railroad Signalmen on the Toledo Indianapolis Seniority District, Hamilton Subdivision, particularly C.M. Kruezer ID# 518689, G.T. Keefe ID# 206686, P.M. Bushle ID# 519146, J.C. Emmert ID# 506709, R.A. Crowder ID# 518290, R.D. Elstun ID# 518930, D.W. Fullenkamp ID# 520073, who are now working, and are responsible for Maintenance and Construction of the Signal System on the Hamilton Subdivision; from MP 25 Hamilton, Ohio to MP 130.3 Indianapolis Indiana; with assigned hours 7:30 a.m. to 4:00 p.m.; meal period from 11:30 a.m. to 12:00 p.m.; rest days Saturdays, Sundays and Holidays.

a) Carrier violated the current Signalmen's Agreement, especially the Scope, Rule 30, and the Seniority, bulletining and assignment Rules, overtime and related Rules. When it permitted employees of C&O System Signal Force 7Xa3, to perform signal construction work at Cottage Grove, Indiana interlocker, MP 48.2 Hamilton Subdivision.

a) Carrier should now be required to compensate Signal employees mentioned, on a prorated basis equal to man hours worked. (Signal Foreman \$14.78/hr. Signalman \$14.13/hr.) Employees of Force 7Xa3 are not covered by the Agreement between the Baltimore and Ohio Railroad Company and the Brotherhood of Railroad Signalmen." Carrier File #15(90-12). BRS Case #8298-CSXT. 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 waived right of appearance at hearing thereon.

The Brotherhood of Railroad Signalmen executed an agreement with the former Baltimore and Ohio Railroad Company (B&O), effective October 1, 1951. That Agreement continued in effect following the merger of the B&O into the Chesapeake and Ohio Railway Company (C&O) on April 30, 1987 and the subsequent merger of the C&O into the CSX Transportation Company (CSXT) on August 31, 1987. Prior to the merger of B&O into C&O and then into CSXT, Signalmen working under the B&O October 1, 1951 Agreement, performed signal construction work and maintenance at the interlocking plant at Cottage Grove, Indiana, where C&O tracks cross the B&O.

Between October 5, 1989, and October 31, 1989, CSXT utilized a C&O Signal Gang, consisting of a Foreman and 4 Signalmen to effect repairs at the Cottage Grove interlocking plant, for a total of 900 hours (175 straight time and 5 hours overtime for each member of the gang). The Organization maintains that use of a C&O Signal Gang to perform work on the territory covered by the B&O Agreement is in violation of the Scope Rule of that Agreement. Carrier maintains that under a business agreement, dated May 31, 1902 between certain predecessor companies to both the B&O and C&O it was appropriate to have the work in dispute here performed by the C&O gang.

The B&O Signalmen's Scope Rule provides in part:

"No employee other than those classified herein will be required or permitted, except in an emergency, to perform any of the signal work described herein except that signal supervisory and signal engineering forces will continue in their supervisory capacity to make such tests and inspections of all signal apparatus and circuits as may be necessary to insure that the work is

installed correctly and properly maintained. The term 'emergency' as used herein is understood to mean the period of time between the discovery of a condition requiring prompt action and the time an employee covered by this Agreement can be made available."

This language manifests the contemporary intent of the negotiators in 1951 that signal construction and maintenance work occurring on the B&O, would be performed only by employees covered by the B&O Agreement. The language in the Agreement and the scope of its coverage was maintained, notwithstanding the merger of the B&O into the C&O and the subsequent merger of the C&O into CSXT. In other words, while the corporate identity may have changed several times, the Organization and the Carrier continued the Working Agreement and its territorial boundaries unaltered. Jurisdictions which existed at the time the Agreement was adopted, October 1, 1951, continued to exist at the time the work was performed at Cottage Grove.

Carrier argues that decisions as to which entity is entitled to perform the work at Cottage Grove is solely within the scope of CSXT's decision making authority. It bases this argument on the language of the 1902 "business agreement" between predecessor companies at the B&O and C&O which provided that one company would build the interlocking plant and the other would maintain it. The resulting mergers, therefore evolve into a situation giving CSXT complete freedom of choice in which Carrier, B&O or C&O, will do the work.

The Board finds this argument totally unpersuasive. One of the successor companies to the 1902 "business agreement" agreed with the Organization that nobody but B&O Signalmen would perform work on the B&O. At the time that this understanding was made (October 1, 1951) the Cottage Grove interlocking plant was treated as a B&O facility and construction and maintenance thereat was performed by B&O Signalmen working under the B&O Agreement. In blunt terms, notwithstanding the 1902 "business agreement" and notwithstanding any rights the C&O may have had to enter the Cottage Grove interlocking plant and notwithstanding any allocation of costs concerning maintenance and construction at that plant between B&O and C&O, B&O Signalmen were given an exclusive right to the work at that plant, except in an emergency. Carrier is not now privileged to have maintenance and construction work performed by strangers to the Agreement on the basis that it somehow acquired sole discretionary authority as a result of ensuing mergers. That argument is absurd.

The claim will be sustained. The named claimants shall be paid an equal proportionate share of the dollar equivalent of the

total hours (900) the C&O Signal Crew worked at the Cottage Grove Interlocking Plant between October 5, 1989, and October 31, 1989.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever, Secretary To The Board

Dated at Chicago, Illinois, this 16th day of July 1993.