

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33152
Docket No. SG-33399
99-3-96-3-888**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.**

STATEMENT OF CLAIM:

“Claims on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (B&O):

A. Claim on behalf of W.E. Baudendistel and T.J. Rich for payment of an amount equal to the hours worked by construction forces from July 18 to July 23, 1995, from Mile Post 21 to Mile Post 25 on the main line and from Mile Post 0 to Mile Post 11 on the Middletown Subdivision, account Carrier violated the current Signalmen’s Agreement, particularly Agreement No. 15-18-94, when it used construction forces to perform maintenance work on the signal system, and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 15(95-294). BRS File Case No. 10010-B&O.”

“B. Claim on behalf of W.E. Baudendistel and T.J. Rich for payment of an amount equal to the hours worked by construction forces from June 22 to June 29, 1995, and on July 4, 1995, from Mile Post 21 to Mile Post 25 on the main line and from Mile Post 0 to Mile Post 11 on the Middletown Subdivision, account Carrier violated the current Signalmen’s Agreement, particularly Agreement No. 15-18-94, when it used construction forces to perform maintenance work on the signal system, and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 15(95-290). BRS File Case No. 10014-B&O.”

“C. Claim on behalf of B.K. Caldwell for payment of 13 hours at the time and one-half rate, account Carrier violated the current Signalmen’s

Agreement, particularly Agreement No. 15-18-94, when it used a construction force employee to perform maintenance work on the signal system on the Keystone Subdivision on August 19, 1995, and deprived the Claimant of the opportunity to perform this work. Carrier's File No. 15(95-292). BRS File Case No. 10012-B&O."

"D. Claim on behalf of J. Dudai, R.B. Dean, J.E. Thompson, D.L. Holt, E.J. Bickar, E.A. Herdt, T.J. Branowitzer, D.S. Hoey, D.E. Musser, J.D. Fisher, J.A. Moretti, R.G. Boughter, and T.F. Sandefur for payment of a total of 317.5 hours at the straight time rate and 155 hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Agreement No. 15-18-94, when it used construction forces to perform maintenance work on the signal system on the Monongahela Subdivision from June 26 to July 21, 1995, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15(95-293). BRS File Case No. 10011-B&O."

"E. Claim on behalf of D.W. Caldwell, S.R. Brooks, D.H. Kuhns, C.W. Swearman, J. Zurick Jr., R.L. Daniels, L.R. Leister, R.D. Hall, B.K. Caldwell, W.R. Dellinger, A.P. Gall, R.C. Strickler, W.B. McCune, and R.K. Romesburg for payment of an amount equal to the total hours worked by construction forces on the Pittsburgh East End Territory, from July 24 to August 25, 1995, account Carrier violated the current Signalmen's Agreement, particularly Agreement No. 15-18-94, when it used construction forces to perform maintenance work on the signal system, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15(95-289). BRS File Case No. 10015-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.

In each of the claims involved in this case, a System Signal Construction Gang worked with a CSXT system Tie and Surfacing (T&S) Gang, replacing signal wires and rail connectors that were removed or damaged by the T&S Gang during the tie replacement project. The Claimants are all BRS-represented employees regularly assigned to Division Signal Maintenance Gang or District Signal Gang positions, who claim that the work of replacing bond strand and rail connectors ("STN or chicken head") "is and always has been 'maintenance work'" and is not "construction work," as that latter term is defined in Agreement No. 15-18-94. The Carrier denied the claims on several grounds, but primarily asserted that when such bond strand and rail connector work is done as part of a major system reconstruction and renovation, it is no violation of Agreement No. 15-18-94, Side Letter No. 2 to the 1994 Agreement or any other contractual undertaking with the Organization for the Carrier to utilize System Signal Construction Gang employees to do that work.

The Organization's reliance upon Side Letter No. 2 to the 1994 Agreement to support all five claims is misplaced. The record establishes that none of the Claimants in the five separate claims was furloughed and, moreover, no Signalmen were furloughed on the "B&O" territory during the months of June, July and August 1995. Each Claimant worked full time on each claim date and indeed, two of the Claimants in whose territory the track renovation work was performed worked alongside the T&S and System Construction Gangs performing the disputed work.

Nor does the language of Agreement No. 15-18-94 provide contractual support for these claims. To the contrary, the following definition of construction work in that Agreement expressly recognizes a distinction between "the major revision of existing systems" and "maintaining existing equipment or systems:"

"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."

So far as we can tell from this record, the Carrier utilized the System Signal Construction Gangs on the claim dates in a manner consistent with the letter and spirit of that Agreement and Side Letter No. 2. For the foregoing reasons, all of the claims must be denied. The Carrier also properly denied Claim "C," a claim for overtime preference, on the additional and alternative ground that Maintainer Kuhn's territory, not Claimant Caldwell's territory, was where the work was performed on August 19, 1995; thus Caldwell had no entitlement to the overtime under Rule 14.

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 March 1999.

**Labors Dissenting Opinion
Third Division Award 33152
Docket No. SG - 33399**

The facts of record indicate that the Carrier assigned a System Signal Construction Gang to work with a CSXT system Tie and Surfacing (T&S) Gang, replacing signal wires and rail connectors that were damaged during the tie replacement project. The record of handling reveals that the basic thrust of the Organization's claim relied on Side Letter No. 2, which provides a definition of "Construction Work." As denoted in Award 33152, the Board denied the instant Claim and held that "So far as we can tell from this record, the Carrier utilized the System Signal Construction Gangs on the claim dates in a manner consistent with the letter and spirit of that Agreement and Side Letter No. 2."

It must be noted that a contrasting decision was rendered in Third Division Award 32802, wherein the Board held as follows:

"Contrary to argument of the Carrier, we find that the Organization identified Agreement No. 15-18-94 as the Agreement supporting its claim, and that Agreement seems to prohibit B&O System Signal Construction forces from performing work of replacing track wires and rail connectors damaged by track forces replacing ties and surfacing track. This is so for the reason that the definition of construction work contained in Agreement No. 15-18-94, supra, is clear and unambiguous in stating that construction work does not include 'that work which involves maintaining existing equipment or systems.'

We also conclude that the work of replacing track wires and connectors damaged by track forces is maintenance work. There is no difference between replacing damaged track wires and connectors than replacing a fuel pump or generator on a locomotive. It is maintenance work, not construction."

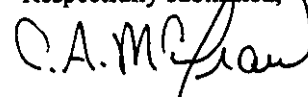
It obvious that Third Division Award 32802 and 33152 are in conflict with each other. Upon review of the entire record in each Case, it is noted that there exists an important contention that was raised by the Organization and addressed in Third Division Award 32802, which was inadvertently missing in Third Division Award 33152. As noted in Award 32802 the Board addressed this important aspect, wherein, it held, in pertinent part.

"We also note that on two different occasion during the on-property handling, the Organization asserted that in the past the work here involved had always been performed by Division Maintenance employees, and 'This is not, 'construction work,' this is and always has been, Maintenance work, on the B&O.' Search of the record before the Board does not reveal that Carrier took issue with the statements or denied them during the on-property handling or in its Submission to the Board. This in itself strengthens the finding that the work involved is properly construed to be maintenance work."

The Organization does not necessarily take exception to the findings of Third Division Award 33152 based on the fact that the Board was not privileged with all of the pertinent facts that were addressed in Award 32802. The Board has consistently and correctly held that the burden of proof rests with the party initiating the dispute. Obviously, the failure of the Board to address the historical practice that was addressed in award 32802 rests solely with the Organization's failure to adequately present that important contention.

The consequence of the Organization's oversight renders Third Division Award 33152 incomplete in determining the proper interpretation of the parties agreement and historical understanding regarding the difference between maintenance work and construction work.

Respectfully submitted,



C.A. McCraw, Labor Member
National Railroad Adjustment Board