

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35079
Docket No. SG-34683
00-3-98-3-342**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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 Company (B&O):

Claim on behalf of J. Zurick, Jr., R. D. Hall, and W. B. McCune for payment of 80 hours each at the straight time rate and 40 hours each 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 relocate existing signal lines at Mile Post BF217.1 during February of 1996, and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 15(97-128). BRS File Case No. 10560-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 April 8, 1997, the Organization filed a claim on behalf of Lead Signal Maintainer J. Zurick, Jr., and Signal Maintainers R. D. Hall and W. B. McCune, alleging that the Carrier violated CSXT Labor Agreement No. 15-18-94 on February 10, 1997, when it had B&O System Gang No. 7X18 relocate high voltage distribution lines and signal lines underground for an outside party at MP BF217.1. The Organization contends that according to the B&O System Agreement, the work in question was heavy maintenance work involving existing equipment or systems and not construction work and should have been done by the Division Maintenance Gang. The Organization argues that the existing equipment in question was built by Division Maintainers over 50 years ago and that any work performed on the system should accrue to the Division Maintenance Gang. The Organization further argues that the work at issue involved only the temporary movement of wires from a pole line to underground until the completion of a bridge project, which constitutes maintenance work. The Organization also argues that the B&O System Gang had no special equipment to perform the project and performed the work with equipment also accessible to Division Maintainers. The Organization contends that although the Claimants were working elsewhere on the claim dates, the Carrier could have assigned them to the job at issue, but deprived the Claimants of a work opportunity that accrued to them by Agreement. Lastly, the Organization argues that because the B&O System Gang worked ten-hour days on February 10, 11, 12, 14, 17, 18, 19, and 20, and worked overtime on February 14, 21, 22, and 23, for a total of 80 hours straight-time and 40 hours time and one-half, each Claimant should also be paid for that time.

The Carrier denied the claim, contending that the work in question was as a result of a state bridge construction project and constituted a major revision of an existing system, which was in compliance with the definition of construction work as defined in the B&O Agreement. The Carrier also argues that System Construction Gangs were established by the 1994 Agreement, and whatever may have been the prior practice was changed by that Agreement. The Carrier argues that the Organization has not shown that any Rule exists that grants Division Maintainers exclusive rights to the work merely because they performed it in the past. In addition, the Carrier contends that the work in question cannot be considered maintenance work because it was of such magnitude that it required the services of a signal team with equipment and men to perform the work. The Carrier argues that the work constituted the installation of new service and not maintenance work. Further, the Carrier argues that the Claimants were fully employed and on duty on the dates in question and

suffered no loss of earnings due to the alleged violation. Therefore, the Carrier argues that the Claimants were not available to perform the work.

The Board reviewed the record in this case, and finds that the Organization has not met its burden of proof that the Carrier violated the Agreement when it used construction forces to relocate existing lines at MP BF217.1 during February 1997.

Construction work is defined as:

“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.”

A thorough review of the record makes it very clear that the work involved here was construction work. Although the Organization argues that it was maintenance work that should have been assigned to Division forces, the Carrier has proven that the burying of the existing high-voltage lines was a major revision of the existing system. This was not heavy maintenance.

The Board notes that Third Division Award 29518 also involved the installation of buried cable. In that case the Board determined that that work, which was identical to the work involved here, was construction work and the claim was denied.

In order to sustain a claim, the Board must have sufficient evidence to support the Organization's theory of the case. In this case, the Organization failed to prove that the work in question was maintenance work that belonged to Division Maintainers. Therefore, the claim must be denied.

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 15th day of November, 2000.