Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36206
Docket No. SG-36302
02-3-00-3-532

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc. (former Louisville and
(Nashville Railroad)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Co. (formerly Louisville & Nashville Railroad):

Claim on behalf of M. J. Clayton, J. L. Tucker, R. L. Stonecipher, G. L. Catlett, B. W. Harris, J. J. Caudill, C. L. Womack, J. B. Gunn, Jr., B. N. Collins, K. L. Brooks, M. D. Warner, D. L. Pitts, J. W. Norcross, E. A. Bass, J. E. Carruth, M. W. Smith, L. E. Bunch, and J. E. Purl, for payment of 54.28 hours at their respective time and one-half rates for each Claimant, except Mr. Caudill, who should be paid 222 hours at the time and one-half rate, and Mr. Collins, who should be paid 10 hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Rules 51, 31, and 32, when beginning on June 3, 1999, and continuing through June 24, 1999, it allowed employees assigned to a System Signal Gang to perform work, not covered under Rule 51, on Seniority District No. 9, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15(99-182).General Chairman's File No. 99-208-9. BRS File Case No. 11362-L&N."

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.

This dispute concerns the Carrier's assignment of a System Signal Construction Gang ("System Gang") to work with a Maintenance of Way System Production Tie and Surfacing Gang ("Tie Gang") from June 3-24, 1999 on track construction on District 9 of the former L&N Railroad.

By letter dated July 26, 1999 the General Chairman filed a claim alleging that Rules 31, 32 and 51 were violated when the System Gang was used to work in conjunction with the Tie Gang from June 3-24, 1999. Specifically, the General Chairman contended that System Gangs were precluded from performing the work because it was not, in accordance with Rule 51, a "new installation or new construction," but rather "routine maintenance work" that could only be performed by the Claimants. The General Chairman premised his argument on past practice and cited Letter Agreements from 1968 and 1984.

The Carrier denied the claim taking "exception" to the General Chairman's assertion that the signal support of SPG work "is considered maintenance work by past practice, and is not new construction." The Carrier noted that the work performed by the System Gang, i.e., installation of new turnouts, switch machines and switch hardware, resulting in relocation and replacement of wayside signals, constitutes a "new installation," under Rule 51(a).

Further, the Carrier maintained that the General Chairman's reliance upon 1968 and 1984 Letter Agreements was "misplaced," specifically stating that:

> "The magnitude of Maintenance of Way work on the W&A Subdivision in June, which included a rail force, two timber and surface forces, an independent surface force and curve patch rail forces was beyond the capability of maintenance forces. Also, the claim makes no allowance

limitations resulting from hours of service regulations, and the fact W&A Subdivision maintenance employees worked about as much overtime as legally allowed."

Finally, the Carrier cited Third Division Award 21064, noting that the "General Chairman's position in this matter is a continuation of a position which previous Board Awards refer to as a 'strained interpretation' of the Rule defining construction and maintenance work."

The issue was not resolved during conferences held on January 11 and 12, 2000, and is now before the Board for adjudication.

In pertinent part, Rule 51-SYSTEM GANGS-SPECIAL RULE- states:

"(a) System gangs will be confined to construction work on new installations, except for necessary maintenance changes in connection with a construction project, and in emergency cases such as derailments, floods, snow blockades, fires and slides."

Between June 3 and 24, 1999, the Carrier assigned a four-man System Gang to work with a Maintenance of Way Tie Gang on District 9 of the former L&N Railroad. The record demonstrates that the work performed included the installation of new turnouts, switch machines and switch hardware, and required relocation and replacement of wayside signals, renewing track wire connections and power cables, and finally, cleaning up and hauling scrap material. The Organization asserts that the above named work was "routine maintenance work which may only be performed by District forces," and that Rule 51 "restricted" the Carrier from utilizing System Gangs from performing the work because it was not "new" signal construction.

However, in these circumstances, the System Gang was not performing track construction with the Tie Gang, but rather it was performing signal construction in conjunction with the tie and surfacing construction project. Paragraph (a) of Rule 51 clearly provides for the use of System Gangs to perform necessary maintenance changes in connection with any construction project.

In that connection, this claim is nearly identical to numerous claims previously progressed to the Board (See, for example, Third Division Awards 29108 and 21064, in

addition to Fourth Division Award 3310). In that regard we are guided by the principle of res judicata as succinctly summarized by the Board in Fourth Division Award 3309quoting from Third Division Award 8458:

> ". . . The issue involved in those cases is the same one we are asked to readjudicate now. The Board, as a matter of law and sound public policy, ought to adhere to the rule of res judicata. The law declares 'The awards of the several divisions of the Adjustment Board . . . shall be final and binding upon both parties to the dispute. . . .' (Section 3, First (m)). This Board itself in Award 6935, (Referee Coffey), enunciated this sound policy when it said:
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> > 'If, as we maintain, our awards are final and binding, there must be an end some time to one and the same dispute or we settle nothing, and invite endless controversy instead. The pending claims, having been once adjudicated, are now barred from further Board consideration, and must be denied on jurisdictional grounds.'"

Finally, it is well established that when there is an asserted jurisdictional question between employees of the same craft, albeit of different classes, and represented by the same Organization, the burden of establishing exclusivity is a strict requirement if the Claimants are to prevail. (See, for example, Third Division Awards 33156 and 33977). In these circumstances, the Organization failed to prove that the work in dispute accrued exclusively to the Claimants. Premised upon all of the foregoing, this 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 24th day of September 2002.