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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36633
Docket No. SG-36106
03-3-00-3-286

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc.
((former Baltimore & 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 G. R. Mettle, R. L. Gamble, Jr., T. E. Disque, T. A. Gamble, and B. B. Garrison for payment of 650 hours at the straight time rate to be divided equally among the Claimants, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, CSXT Labor Agreement No. 15-18-94, and Side Letter No. 2 of the November 17, 1994 Agreement, when in January of 1999, it permitted System Signal Construction Gangs, who are not covered by the B&O Agreement to perform pole line maintenance on the Philadelphia Subdivision between Mile Post 17.5 and Mile Post 48.0 and deprived the Claimants of the opportunity to perform this work. Carrier File No. 15 (99-91). BRS File Case No. 11377-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.

This claim protests the Carrier's use of System Signal Construction Gang (SSCG) 7XD2 rather than local District maintenance forces to correct FRA defects and repair storm related damage to 30 miles of pole line on the Philadelphia Subdivision between January 10 and 22, 1999. It is primarily a Scope Rule dispute, with the Organization asserting that the work in issue was routine maintenance, rather than construction work, which may only be performed by District forces.

In correspondence on the property, the Carrier responded to the claim by asserting that SSCG 7XD2 was brought in to assist Signal Maintainers with this work, and that a Lead Signal Maintainer and two Signalmen including three of the five named Claimants, worked with the SSCG throughout the entire period of repair, and was similarly offered overtime work. These assertions were never rebutted by the Organization.

The Organization argues that the type of work performed is, and will always be, maintenance work, which is reserved to District maintenance forces and falls outside the definition of construction work found in the Agreement. It notes that this work was not related to a major revision of an existing system, was the same work that District Signalmen had performed on weekends months earlier and was not incidental to a new signal system. The Organization relies upon Third Division Award 32802 in arguing that its claim should be sustained.

The Carrier argues that this is exactly the type of work that SSCGs were established to perform system wide, that the Scope Rule of the Agreement, which covers SSCGs as well as the Claimants, does not preserve this work to one group or the other, and that they are routinely used to augment each other's forces. It asserts that this is a jurisdictional question between employees of the same craft in different classes, represented by the same Organization, and that the Organization has a heavy burden of establishing exclusivity in such cases, citing Third Division Awards 35843, 21495, 20425 and 13198. The Carrier contends that the Organization failed to prove that the work in question was maintenance work that belonged exclusively to District personnel, and asserts that the disputed work was done as part of a major system reconstruction and renovation. The Carrier argues that this issue, which has

been repeatedly litigated by the Organization, should be finally resolved under the principle of res judicata, citing Third Division Awards 36206, 36203, 35079, 33977, 33155, 32599, among others.

A careful review of the record convinces the Board that the Organization failed to meet its burden of proving a violation in this case. As noted, in cases such as this involving a jurisdictional dispute between employees of the same craft in different classes represented by the same Organization, the burden of establishing exclusivity is more heavily upon the Petitioner. See Third Division Awards 35843 and 20425. The Organization failed to establish that the type of work here involved, including correcting FRA defects and past storm damage, was exclusively reserved to District maintenance forces by Agreement language or practice. In fact, the Carrier posited that the SSCG was used herein primarily to augment and aid District signal personnel in making the extensive repairs required, and the Organization did not take issue with the fact that at least three of the named Claimants worked in conjunction with the SSCG throughout the claim period on this project.

Further, the history of the "maintenance" vs. "construction" work dispute on this property, with claims filed by the Organization on behalf of each group, establishes that although CSXT Labor Agreement No. 15-18-94 specifically defines construction work to exclude routine maintenance of existing systems, nothing therein exclusively reserves such work to SSCGs to the exclusion of District Maintenance Gangs, or visa versa. See Third Division Awards 33155 and 32599. In agreement with a vast majority of the Awards issued concerning this issue on this property, we conclude that, in the absence of the Organization proving that District Maintenance forces have performed this work to the exclusion of all other classes of Signalmen, the claim must fail.

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 29th day of July 2003.