

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36680
Docket No. SG-36342
03-3-00-3-583**

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen 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 Co. (B & O):

Claim on behalf of E. J. Bickar, J. Dudai, D. J. Holt, R. B. Dean, T. J. Branowitz, E. A. Herdt, J. E. Thompson, D. S. Hoey, J. A. Moretti, D. E. Musser, J. D. Fisher, T. F. Sandefur, and R. G. Boughter for payment of 60 hours at the straight time rate, 350 hours at the time and one half rate, and 187 hours straight HSL time at the Signaller's rate of pay; 60 hours at the straight time rate, 350 hours at the time and one half rate, and 187 hours straight HSL time at the Leader's rate of pay; 300 hours at the time and one half rate, and 210 straight HSL time at the Foreman's rate of pay, to be divided equally among the Claimants. Account Carrier violated the current Signalmen's Agreement, particularly Agreement No. 15-18-94 and Side Letter No. 2, when beginning May 1, through May 31, 1999 it allowed two System Signal Construction teams to perform maintenance work. The maintenance work consisted of following the system undercutter and shoulder cutter units to make necessary repairs to damaged signal equipment. This occurred between milepost PLE 29 and milepost PLE 40 on the Pittsburgh Sub prior rights seniority district. Carrier File No. 15 (99-0193). BRS File Case No. 11391-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 seeks 704 straight time hours and 1,000 overtime hours on behalf of 13 Claimants on the prior rights roster for the Pittsburgh Subdivision (Three Rivers Division). The claim alleges that the Carrier violated the Scope Rule, CSXT Labor Agreement No. 15-18-94 and Side Letter No. 2 dated November 17, 1994 of the B&O System Agreement when it used an undisclosed number of employees from System Signal Construction Gangs 7X19 and 7XF8 to work with a Maintenance of Way System Production Gang operating a system undercutter and shoulder ballast cleaner, between Milepost PLE 29 and PLE 40 during the period of May 1 to May 31, 1999.

In pursuing this claim, the Organization quite understandably cited and relied upon Third Division Award 32802, which partially sustained a similar claim between these same Parties involving work performed in conjunction with a Maintenance of Way System Production Gang by System Signal Construction Gangs 7X14 and 7X15 (different dates, named Claimants and at a different location). Even though we are not technically bound by doctrines of stare decisis or res judicata, the Board frequently has emphasized that an arbitrator with a proper regard for the arbitration process and for stability in collective bargaining should accept an interpretation by a prior arbitration as authoritative, unless it is palpably erroneous or factually distinguishable.

The work performed by System Signal Construction Gangs 7X14 and 7X15 in Award 32802 (replacing track wires and rail connectors damaged by a Maintenance of Way System Production Gang during a major tie-replacement and track resurfacing project) is not materially different from the work performed by System Signal Construction Gangs 7X19 and 7XF8 in the present claim (replacing track wires and rail connectors ("chicken heads") that were damaged by system undercutter and shoulder ballast cleaner machines operated by the Maintenance of Way System Production Gang during a major tie-renovation project). However, we must reluctantly hold that Award 32802 erred in concluding that a selected quotation from CSXT Labor Agreement No. 15-18-94 read out of context "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."

That overly broad holding of Award 32802 that any and all work of replacing track wires/rail connectors damaged by track forces is, per se, routine maintenance work prohibited for performance by System Signal Construction Gangs, irrespective of whether that damage occurs as part of a major track renovation/construction project by a Maintenance of Way System Production Gang, is inconsistent with the following literal language of the controlling CSXT Labor Agreement No. 15-18-94:

"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.

System Signal Construction Gang - A gang used to perform year round construction work throughout the territory covered by the combined B&O Agreement."

On the basis of the facts presented on the record before the Board in the present case, we are not persuaded that the Carrier violated CSXT Labor Agreement No. 15-18-94 or Side Letter No. 2 dated November 17, 1994 of the B&O

System Agreement by using System Signal Construction Gangs to replace track wires and track connectors collaterally damaged by a Maintenance of Way System Production Gang performing a major tie-renovation project between Milepost PLE 29 and PLE 40, during the period of May 1 to May 31, 1999. See Third Division Awards 33152, 33155, 33156, 32599, 32292. See also Awards 36258, 36206, 35079.

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 18th day of August 2003.