

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36691
Docket No. SG-36116
03-3-00-3-294

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 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 W. M. Sheckles, M. T. Gaver, J. D. White, V. K. Kennedy, B. L. Watkins, M. A. Tarleton, T. E. Painter, J. L. Eagle, R. W. Graves, and D. P. Sweitzer for payment of 90 hours at the straight time rate, and 124 hours and 58 minutes at the time and one-half 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 beginning on January 19, through January 29, 1999, it permitted System Signal Construction Gangs, who are not covered by the B&O Agreement to perform signal maintenance work of protecting existing signal cables while contractors were installing fiber optics cables on the Metropolitan Subdivision between Mile Post 2 and Mile Post 8, and deprived the Claimants of the opportunity to perform this work. Carrier File No. 15 (99-97). BRS File Case No. 11382-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) employees rather than Baltimore West End Seniority District maintenance forces to protect existing signal cables on the Metropolitan Subdivision between Mile Posts 2 and 8 from January 19 to 29, 1999 while contractors were installing fiber optic cables. 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 maintenance forces.

The Organization argues that the protection 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 CSXT Labor Agreement No. 15-18-94 which is the only work properly assigned to SSCGs, relying on Third Division Award 32802. The Organization contends that these employees worked under the supervision and control of the Maintenance Foreman, and the Carrier's acknowledgment that they were sent to help the maintenance forces supports the conclusion that this was maintenance work, which should have been assigned to the Claimants. The Organization points to the lost work opportunity as necessitating a monetary remedy for the Claimants, citing Third Division Awards 20633, 29232, 33518 and 12671.

The Carrier notes that two employees who normally worked on a SSCG were temporarily assigned solely to assist the Signal Maintenance force at the Signal Foreman's request because he needed additional help protecting the Carrier's signal system while the contractor installed new cables along the Carrier's right-of-way, and that the SSCG was not itself assigned the work in issue. The Carrier asserts that these two employees did not perform any scheduled maintenance work. The

Carrier contends that there is nothing in the Agreement designating the work of locating buried cable as either maintenance or construction work, or, in fact, as signal work itself, and argues that its exercise of prerogative in making this assignment was proper, citing Third Division Award 36258. The Carrier also argues that this is a duplicative and excessive claim, because the Organization filed three different claims on behalf of the same Claimants covering the same time period but different work, and asserts that the Claimants could not have worked their regular hours in addition to the numerous straight time and overtime hours encompassed within the claims during this period, requiring that the claim be denied.

A careful review of the record convinces the Board that the Organization failed to meet its burden of proving a violation of the Scope Rule or CSXT Labor Agreement No. 15-18-94 in this case. The facts herein are similar to those addressed by the Board in Third Division Award 36258. In that case the claim protested the use of a SSCG to locate buried cable and provide track protection for the same contractor who was similarly installing fiber optic cable along the right-of-way. The Board held:

“ . . . The Organization failed to effectively refute the Carrier's evidence that the fiber optic cable installed by Quest was a new installation which, more importantly, was not part of the signaling system; albeit the System Signal Gang was used to provide track protection for the contractors on this construction project and to ensure that signal lines and equipment were not damaged. Denial of this claim for insufficiency of proof by the Organization is supported by a long line of Board precedent.”

We adopt the rationale of the Board in Third Division Award 36258 and similarly hold that the Organization failed to establish that the protection work in issue was exclusively reserved to District maintenance forces by Agreement language or practice. In fact, there was no dispute that the two employees sent from the SSCG were used herein to augment and aid District signal personnel in providing the required protection.

Additionally, it appears that the Organization has attempted to gain compensation for these Claimants, who were fully employed during the claim period, for work on three separate projects within the same time period by filing overlapping claims on their behalf. There is no showing that the Claimants suffered a loss of work opportunity, or that there is justification for such unjust enrichment in any event.

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.