

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37113
Docket No. SG-37364
04-3-02-3-398**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig 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, Inc. (CSXT):

Claim on behalf of M. K. Mohler, C. W. Bell, M. L. Hartman, L. D. Goff, R. L. Kalbaugh, M. L. Heck, R. M. Shambaugh, L. W. Weaver, R. L. Cale, D. W. Wood, E. J. Mack, W. E. Whitacre, E. T. Frazier, G. L. Cathell, Jr., S. L. Jones, M. T. Appel, M. R. Chambers, R. A. Witt, D. E. Podlesnik and P. L. Garland, for 657 hours at the straight time rate and 66 hours at the time and one-half rate for a total of \$16,269.89, to be divided equally among the Claimants, account Carrier violated the current Signalmen's Agreement, particularly CSXT Labor Agreement 15-18-94, when it assigned maintenance work at the Westbound Hump Yard at Cumberland, Maryland to the System Signal Construction Gang 7XF3 and denied the Claimants the opportunity to perform this work. Carrier's File No. 15 (01-0117). General Chairman's File No. CUMB 1-07-01. BRS File Case No. 12116-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.

The facts of the instant matter do not appear to be in dispute. During a three week period in March 2001, the Carrier used System Signal Construction Gang No. 7XF3 consisting of seven Signalmen, in conjunction with existing forces, to assist in large-scale track repairs to the master retarder at the westbound hump yard in Cumberland, Maryland. The track forces were completing this work as part of a major track structure capitalization project.

By letter dated May 3, 2001, the Organization submitted its claim alleging that the Carrier violated CSXT Labor Agreement No. 15-18-94 because the work that the System Signal Construction Gang performed ". . . should have been handled by the Local Maintenance personnel covered by the Cumberland Division Roster."

The issue in the instant case is whether the Carrier erred when it assigned a System Signal Construction Gang to make large-scale repairs to the master retarder on the former Cumberland Seniority District within the former B&O property. It is clear that CSXT Labor Agreement No. 15-18-94 specifies that System Signal Construction Gangs were established for the purpose of performing construction rather than maintenance work.

The Organization takes the position that the Carrier was prohibited from assigning the work in question to a System Signal Construction Gang because said work consists of maintenance and not construction tasks. The Organization requests pay for the Claimants in the amount of 657 hours at the Signalmen's straight-time rate of pay and 66 hours overtime to be divided equally among the Claimants for this loss of work opportunity.

Conversely, the Carrier takes the position that it acted properly. CSXT Labor Agreement No. 15-18-94 provides for the use of System Signal Construction Gangs when more than routine maintenance work is required or a major revision of an existing system is needed. In the instant situation, the system work included, among other tasks, large-scale repairs to the master retarder at the westbound hump yard in Cumberland, Maryland. The track forces were completing this work as part of a major track structure capitalization project.

A major revision constitutes a repair, replacement and inspection of signal components over a large territory during a confined and fixed time period. Furthermore, System Signal Construction Gangs may be used for service in conjunction with point-headquartered Signalmen. According to the Carrier, the instant project was a major revision that allowed for the use of a System Signal Construction Gang under CSXT Labor Agreement No. 15-18-94.

The relevant language of CSXT Labor Agreement No. 15-18-94 provides as follows:

"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."

After a review of all evidence, the Board finds that it must agree with the Carrier. The burden of proof in this matter falls on the Organization to prove that the Carrier should have assigned a maintenance crew to the project. In a similar case, Third Division Award 33152, the Board ruled for the Carrier:

"In each of the claims involved in this case, a System Signal Construction Gang worked with a CSXT system Tie and Surfacing (T&S) Gang, replacing signal wires and rail connectors that were removed or damaged by the T&S Gang during the tie replacement project. The Claimants are all BRS-represented employees

regularly assigned to Division Signal Maintenance Gang or District Signal Gang positions, who claim that the work of replacing bond strand and rail connectors ('STN or chicken head') 'is and always has been 'maintenance work'' and is not 'construction work,' as that latter term is defined in Agreement No. 15-18-94. The Carrier denied the claims on several grounds, but primarily asserted that when such bond strand and rail connector work is done as part of a major system reconstruction and renovation, it is no violation of Agreement No. 15-18-94, Side Letter No. 2 to the 1994 Agreement or any other contractual undertaking with the Organization for the Carrier to utilize System Signal Construction Gang employees to do that work.

The Organization's reliance upon Side Letter No. 2 to the 1994 Agreement to support all five claims is misplaced. The record establishes that none of the Claimants in the five separate claims was furloughed and, moreover, no Signalmen were furloughed on the 'B&O' territory during the months of June, July and August 1995. Each Claimant worked full time on each claim date and indeed, two of the Claimants in whose territory the track renovation work was performed worked alongside the T&S and System Construction Gangs performing the disputed work.

Nor does the language of Agreement No. 15-18-94 provide contractual support for these claims. To the contrary, the following definition of construction work in that Agreement expressly recognizes a distinction between 'the major revision of existing systems' and 'maintaining existing equipment or systems:'

'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.'

So far as we can tell from this record, the Carrier utilized the System Signal Construction Gangs on the claim dates in a manner consistent with the letter and spirit of that Agreement and Side Letter No. 2. For the foregoing reasons, all of the claims must be denied."

See Also Third Division Awards 36862, 36861, 36802.

In the instant case, we believe that the Carrier utilized the System Signal Construction Gang in a manner consistent with the intent of CSXT Labor Agreement No. 15-18-94. The work involved in this case was construction work, and therefore, it was appropriate to use a System Signal Construction Gang to perform said work. We find that the Organization has been unable to meet its burden of proof in this matter. Thus, the 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 25th day of August 2004.