

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37114
Docket No. SG-37365
04-3-02-3-399

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. A. Tarleton, for 270 hours at his straight time rate and 84 hours at his time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Rule 16 and CSXT Labor Agreement 15-18-94, when it allowed System Signal Construction Gang forces to perform maintenance work on the Old Main Line Subdivision between MP BAC 6.0 and MP BAC 7.0 from January 29 through March 16, 2001 and deprived the Claimant of the opportunity to perform this work. Carrier’s File No. 15 (01-0124). General Chairman’s File No. BWE-8-01-1. BRS File Case No. 12117-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. The Claimant in this case is M. A. Tarleton, who at the time of this dispute was assigned the position of Signal Maintainer on the Baltimore West End Seniority District. Between January 29 and March 16, 2001, the Carrier used an employee from System Signal Construction Gang No. 7XB7 to mark signal cables for installation of a fiber optic cable near Sykesville, Maryland. This work was part of a large-scale fiber optic project being completed by an outside concern.

By letter dated March 21, 2001, the Organization submitted its claim alleging that the Carrier violated Rule 16 and CSXT Labor Agreement No. 15-18-94 because the Carrier "... permitted employee W. O. Mitchell I.D.# 320500 of System Signal Gang #7XB7 to perform maintenance work by protecting existing signal cable, pole line, bond wires and other signal equipment . . . while contractors were installing cables."

The issue in the instant case is whether the Carrier erred when it assigned an employee of a System Signal Construction Gang to mark cable for a large-scale fiber optic project on the former Old Main Line 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 member of a System Signal Construction Gang because said work consists of maintenance and not construction tasks. The Organization requests pay for the Claimant in the amount of 270 hours at the Signalmen's straight-time rate of pay and 84 hours overtime 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 marking cable for a large-scale fiber optic project on the former Old Main Line Seniority District within the former B&O property and such work is not considered maintenance work.

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 36691, the Board ruled for the Carrier:

"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 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.

Form 1
Page 5

Award No. 37114
Docket No. SG-37365
04-3-02-3-399

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.