

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37247
Docket No. SG-37618
04-3-02-3-757**

The Third Division consisted of the regular members and in addition Referee Robert Perkovich 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 CSX Transportation, Inc. (CSXT):

Claim on behalf of T. B. Able, W. E. Baudendistel, C. P. Heitzer, B. L. James, G. M. Kerrigan, C. M. Kreuzer, T. J. Rich, S. P. Scott and J. L. Smith, for 785 hours at the Signalmen’s rate of pay, 220 hours at the Signal Foreman’s rate of pay, 200 hours at the Lead Signalmen’s rate of pay and 21 hours at time and one half the Lead Signalman’s rate of pay, to be divided equally among the Claimants, account Carrier violated the current Signalmen’s Agreement, particularly CSXT Labor Agreement 15-18-94, when it allowed System Signal Construction Gang 7X16 to perform maintenance work between Sidney and Wapakoneta, Ohio, starting September 5, 2001 to October 11, 2001, and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 15(02-0016). General Chairman’s File No. T/I-1-1-01-02. BRS File Case No. 12409-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.

Between September 5 and October 11, 2001 the Carrier utilized System Signal Construction Gang 7X16, consisting of four Signalmen and a Foreman, to prepare a large swath of territory on its Indianapolis Subdivision for a System Track team that was to perform a major construction project involving tie and surfacing work. More specifically, the work in question consisted of removing hundreds of staples from track leads, removing hundreds of fasteners for termination tie shunts and marking signal wires so that they would be visible for the track forces that were completing the construction project that was scheduled for a confined and fixed period of time.

The Organization thereafter filed this claim, asserting that the work in question was maintenance work, rather than construction work, and thus, under CSXT Labor Agreement No. 15-18-94 that provides that construction work is that “. . . which involves the . . . major revision of existing systems,” the work in question should have been assigned instead to the Claimants as members of the Carrier’s local maintenance gang.

We are not persuaded to sustain the claim herein for a variety of reasons.

First, the record reflects that this very same dispute is not new to these parties on this property and that claims of this type have been overwhelmingly rejected by the Board. Thus, the claim could be denied purely on this basis, the principle of res judicata, in accordance with the prior holdings in, for example, Third Division Awards 36681 and 36206. There is however, one, and only one, prior Award of the Third Division, Award 32802, that sustained, in part, a similar complaint. However, that Award has routinely not been followed and was, in Third Division Award 36680, persuasively reasoned away. In light of this long line of persuasive precedent, and despite Award 32802, we find that without regard to the merits of the claim, it must be denied.

Moreover, when the merits of the claim are considered, we come to the very same conclusion.

First, in claims such as this where the Organization raises a jurisdictional dispute between employees of the same craft but in different classes, the Organization not only bears the burden of proof as it does in all contract interpretation cases, but that burden is even greater than it would be in other cases. See e.g., Third Division Awards 36633 and 36635. In addition, to meet that heavier burden, the Organization must provide sufficient probative evidence to prove that the work in question was indeed maintenance work, and assertions alone will not stand that test. See e.g., Third Division Award 36681.

In our view the Organization failed to meet this standard. The record evidence shows that the project herein involved a fixed duration of time and a long portion of the Carrier's territory. More importantly, the work in dispute was a part of that project and involved hundreds and hundreds of tasks during that fixed period and over that large territory. Thus, like the work in Third Division Award 29518, the work herein, although it might have some attributes of maintenance work, it can best be characterized as construction work because it was integral to the construction work involved in the project.

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 27th day of October 2004.