Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37250
Docket No. SG-37666
04-3-03-3-8

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 D. A. Kuhns, J. Zurick, Jr., L. R. Leister, R. D. Hall, B. K. Caldwell, W. R. Dellinger, A. P. Gall, R. C. Stricker and R. K. Romesburg, for all straight time and overtime hours worked by the System Signal Construction Gang from October 31, 2001, through October 31, 2001, account Carrier violated the current Signalmen's Agreement, particularly CSXT Labor Agreement 15-18-94, when it used a System Signal Construction Gang to perform the maintenance work of installing two signals at Philson, Pennsylvania and two signals at Glenco, Pennsylvania, that were outside of the AFE project at Sandpatch, Pennsylvania, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15(02-0035). General Chairman's File No. PEE-2-2-02. BRS File Case No. 12395-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.

At all material times herein the Carrier utilized a System Signal Construction Gang to install four new signals as part of a track structure capitalization project over a part of the Carrier's territory.

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 over a portion of the Carrier's territory. More importantly, the work in dispute was a part of that project. 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.