

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37286
Docket No. SG-36984
04-3-01-3-594

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers 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 J. A. Rockwell, H. B. Simpson, D. W. Korom, J. R. Seiber, K. A. Pyles, G. P. Shaftic, B. Robinson, R. J. Oboczky, R. F. Selak, S. T. Jones, and A. T. Viano for payment of 925 hours at the straight time rate. This amount to be divided equally among the Claimants. Account Carrier violated the current Signalmen's Agreement, particularly CSXT Labor Agreement No. 15-18-94, when beginning on July 3, 2000, and continuing through August 10, 2000, Carrier assigned System Signal Construction forces to work replacing Red Tag Signals on the Claimants' assigned seniority district. Carrier's action deprived the Claimants of the opportunity to perform this work. Carrier File No. 15 (00-0227). General Chairman's File No. AK1-12-0. BRS File Case No. 11734-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.

On August 24, 2000, the Organization filed a claim on behalf of the Claimants, arguing that the Carrier violated CSXT Labor Agreement No. 15-18-94 and Side Letter No. 2 when it allowed System Signal Construction Gangs 7XF4 and 7XA8 to maintain and repair red tag signals on the Akron Subdivision between M.P. BG 192.5 and M.P. BG 58.4. The Carrier denied the claim.

The Organization contends that the Carrier violated CSXT Labor Agreement No. 15-18-94 and Side Letter No. 2 when it used employees assigned to System Signal Construction Gangs, rather than Division employees, to perform the maintenance work at issue. The Organization argues that because the work in question was not new construction, it did not exclusively belong to the System Signal Construction Gangs under the Agreement, and the Claimants were deprived of this work. The Organization maintains that the Carrier should be required to pay the Claimants for the loss of this work opportunity.

The Organization further asserts that the disputed work involved the ongoing repair of existing signal equipment, and that the work was required because of deterioration and damage from years of inadequate maintenance. The Organization argues that Division employees normally would perform the repair and replacement of damaged and deteriorated red tag signal equipment. The Organization emphasizes that the red tag signals were not removed and relocated to a new or different location, with all new equipment, but maintained at their present location using second-hand equipment that was removed from other areas on the Carrier's property. The Organization argues that CSXT Labor Agreement No. 15-18-94 expressly provides that "work which involves maintaining existing equipment or systems" belongs to Division employees covered by the Agreement. The Organization asserts that the Agreement states that a System Signal Construction

Gang may perform such maintenance work only in the event of flood, acts of God, derailment, or other emergency, but no such events occurred in connection with the instant matter.

The Organization then addresses the Carrier's assertions that the Claimants were assigned to other work and were not available to perform the work in question, that the Claimants were off due to vacation or rest and safety days, and that the Claimants would not have worked even if asked. The Organization maintains that these contentions are ludicrous and without merit. The Organization points out that the Claimants were performing other work only because the Carrier did not assign them to the repair work in question. The Organization emphasizes that the Claimants were never given the opportunity to perform this work. The Claimants had a contractual right to the work in question, they were available to perform the work, and they were improperly deprived of a valuable work opportunity. The Organization argues that the Carrier does not have license to violate the Agreement simply because employees who otherwise would perform the work have been given other assignments, as confirmed by numerous Board decisions.

The Organization goes on to argue that the Board has held that when employees are deprived of the opportunity to perform work that is reserved to them under the Agreement, the employees lose the wages they would have earned for doing the work, and they are entitled to recover for such loss. The fact that the Carrier assigned the Claimants to perform other work while the System Signal Construction Gangs were doing the repair and maintenance work on the existing signal system cannot be held to justify the Carrier's violation of the Agreement.

The Organization ultimately contends that the instant claim should be sustained in its entirety.

The Carrier contends that the instant issue previously has been decided, and the claim should be denied under the principle of stare decisis. The Carrier points out that the majority of the Awards rendered on the property, including the most recent, have upheld the Carrier's position that the Agreement specifically allows it to utilize System Signal Construction Gangs to perform the type of work at issue here. As for the assertion that the Carrier violated Side Letter No. 2, the Carrier

points out that no such violation occurred because no local Signal Maintainer positions were eliminated because the two System Signal Construction Gangs replaced signals during July and August 2000.

The Carrier maintains that the work performed by the System Signal Construction Gang was in compliance with CSXT Labor Agreement No. 15-18-94. The Carrier argues that the unambiguous intent of the Agreement is that the Carrier will have the right to utilize system forces to perform construction work. The Carrier asserts that the Organization's position in this case, that system forces cannot install several signals in an extensive capital improvement construction project, contradicts the clear language of the Agreement providing that construction work is "installation of new equipment and systems and the major revisions of existing systems."

The Carrier argues that it is irrelevant whether the signal masts were brand new or salvaged from another portion of the Carrier's property. Moreover, the General Chairman misses the point in arguing that this was not construction because the signal masts were not "new." The Carrier points out that the General Chairman acknowledged that the signal poles had deteriorated over the years and had been "red-tagged," indicating that they were designated as unsafe and requiring replacement. The General Chairman correctly stated that when there were so many red-tagged signal masts, the work of repairing and replacing them was assigned to System Signal Construction Gangs. Moreover, the Regional Engineer stated that the signals installed were new standard color light signals that replaced obsolete signals.

The Carrier goes on to assert that the sheer number of days and hours worked by the System Signal Construction Gangs proves that this was not routine maintenance work, but a significant construction project involving the installation of new equipment. The Carrier emphasizes that CSXT Labor Agreement No. 15-18-94 expressly allows the use of System Signal Construction Gangs to perform such work. The Carrier argues that the only logical interpretation of the Agreement is that local District forces are to perform routine maintenance of existing equipment, and System Signal Construction Gangs may be assigned to new installations and major revisions of existing systems. The Carrier maintains that in this case, System Signal Construction Gangs were used to perform work that can only be described as

the new installation and major revision of the existing equipment or systems, which is the exact purpose of CSXT Labor Agreement No. 15-18-94. The Carrier argues that all but one Award has upheld the Carrier's right to use System Signal Construction Gangs on construction projects, even when they include work on other than new installations.

The Carrier argues that this dispute involves the replacement of a number of signals during a major construction project, requiring an entirely different utilization of resources and dedication of personnel than is required for one Signal Maintainer to repair one damaged signal. The Carrier further emphasizes that the Organization failed to identify the System Signal Construction Gang employees who allegedly performed the work, and it failed to prove that any of the Claimants were available to perform the work at issue on any of the claim dates. The Carrier maintains that the instant claim, therefore, has been rendered invalid. The Claimants have daily maintenance to perform, and they were fully employed at all times prior to, during, and since July 2000; the Carrier asserts that the Claimants suffered no loss of compensation, so there is no basis for awarding the requested remedy.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Board reviewed the record in this case and finds that the Organization failed to meet its burden of proof that the Carrier acted in violation of the Agreement when it assigned System Signal Construction Gangs to perform the work of replacing red tag signals on the Claimant's assigned seniority district.

The record reveals that the work performed by the System Signal Construction Gang was in compliance with the language that allows such personnel to perform work that "involves the installation of new equipment and systems and the major revision of existing systems. . . ." The record reveals that this was a major project, taking 92 man days and 925 hours and involved the installation of new equipment as well as salvaged equipment. We hold that this work was not routine maintenance and, therefore, does not fit into the restriction set forth in CSXT Labor Agreement No. 15-18-94.

In Third Division Award 32292, the Board stated that the “. . . use of a System Gang to repair damage caused by a derailment was an assignment consistent with the work for which such gangs were established, and did not violate the Agreement.” In addition, in Third Division Award 33152, the Board denied multiple claims on behalf of Signal Maintainers and held that when the work is done as part of a major system reconstruction and renovation, it may be performed by System Signal Construction Gangs. The Board held that “. . . the Carrier utilized the System Signal Construction Gang on the claim dates in a manner consistent with the letter and spirit of the Agreement and Side Letter No. 2.”

Absent a violation of the Agreement, 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 17th day of November 2004.