Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37333
Docket No. SG-37415
05-3-02-3-461

The Third Division consisted of the regular members and in addition Referee Nancy F. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc. (former Baltimore &
(Ohio Railroad Company)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (CSXT):

Claim on behalf of all CSX Signal employees working in the Greater Cincinnati, Ohio, Terminal area, for compensation at the straight time rate for all work performed in the Cincinnati Terminal area and the restoration of five Signal Maintainer's positions and two Lead Signal Maintainer's positions, account Carrier violated the current Signalmen's Agreement, particularly Rule 31 and the Cincinnati Terminal Agreement dated March 24, 1984, when it used system construction forces to perform maintenance work at the Cincinnati Terminal and failed to maintain a workforce adequate to meet the requirements of service. Carrier's File No. 15(01-0130). General Chairman's File no. 0-8-01-1. BRS File Case No. 12123-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 Claimants in this dispute are CSX Signal employees, all of whom work in the Greater Cincinnati, Ohio, Terminal area. In a letter dated May 15, 2001, the Organization submitted a claim in which it alleged that the Carrier violated the B&O Signalmen's Agreement, particularly Rule 31, and Section 4 of the March 1984 Cincinnati Terminal Agreement, ". . . when the Carrier used system signal construction gangs to perform maintenance work on existing switches within the Cincinnati Terminal area. . . ." Specifically, the Organization contended that the Carrier failed to maintain an adequate work force in Cincinnati Terminal area in order to "meet the requirements of service." As a result, the Organization demanded that the Carrier compensate the Claimants at the straight time rate for "all work performed in the Cincinnati Terminal area," and restore five Signal Maintainer's positions and two Lead Signal Maintainer's positions.

In its July 6, 2001 reply, the Carrier confirmed that the construction team was brought to the property to "install electric locks on existing switches," but maintained that the construction crew did not perform any "scheduled maintenance." The Carrier went on to note that none of the signal employees in the affected area suffered a loss of wages. Finally, the Carrier maintained that the Organization failed to provide sufficient documentation to support its claim.

The Organization appealed the Carrier's denial contending that the work at issue accrued to the Claimants and was "not system signal gang work." In that connection, the Organization asserted that the Carrier's "failure" to properly maintain the existing work force and signal equipment did not "entitle Carrier to violate the Agreement." In its final denial to the claim, the Carrier reaffirmed that (1) the work in dispute entailed a "major revision" to the signal system (2) the

Claimants were working at the time of the dispute; and (3) the Organization's claim was premised upon "insufficient evidence."

Except for the specific task involved (installing electric locks to comply with FRA regulations vs. replacing bond strand and rail connectors (a.k.a."STN" or "chicken head") the contract interpretation/application issues presented in this case are virtually indistinguishable from those decided by the Board in Third Division Award 33152. In that decision, the Board held:

> "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.
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> 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."

The judicial doctrines of stare decisis and res judicata do not apply strictly in labor-management arbitration. As a practical matter, however, where a prior decision covers the same parties, issues, facts and contract language, a subsequent arbitrator often will consider the interpretation laid down in the earlier Award as a binding part of the Agreement, unless and until the parties change the language. Even those who refuse to hold prior Awards binding would give them serious and weighty consideration when called upon to interpret the same language. It is not necessary that the subsequent arbitrator endorse all of the reasoning expressed in the earlier opinion. What is important is that the earlier Award contains a holding that is not palpably erroneous. In such circumstances, arbitrators generally conclude that it would be a disservice to the parties to subject them to the unsettling effects of conflicting and inconsistent interpretations of the same contract language in the same set of circumstances.

Based on all of the foregoing, we conclude that Third Division Award 33152 is authoritative precedent that supports the denial of the present claim.

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 19th day of January 2005.