

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37484
Docket No. SG-37010
05-3-01-3-645**

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 W. M. Sheckles, Jr., M. T. Gaver, J. D. White, V. K. Kennedy, B. L. Watkins, M. A. Tarleton, T. E. Painter, J. L. Eagle, Jr., and R. W. Graves for payment of 280 hours at the straight time rate and 127 hours at the time and one half rate. This amount should be divided equally amongst the Claimants. Account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule and CSXT Labor Agreement No. 15-18-94, when Carrier permitted System Signal Construction Gangs, who are not covered by the B&O Agreement, to perform maintenance on the existing signal pole line. The violations began on August 28, 2000, and continued through October 2, 2000, between Mileposts 20.0 and 36.0 on the Old Main Line Subdivision. This action deprived the Claimants of the opportunity to perform this work. Carrier File No. 15 (01-0015). General Chairman's File No. BWE-02-01. BRS File Case No. 11841-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 October 23, 2000, the Organization filed a claim on behalf of Baltimore West End Seniority District personnel arguing that the Carrier violated the current B&O Signalmen's Agreement, particularly the Scope Rule, CSXT Labor Agreement No. 15-18-94, and Side Letter No. 2, when it used System Signal Construction Gangs 7X15, 7XF5 and 7XB7 to perform maintenance work on an existing pole line on the Old Main Line Subdivision between MP 20.0 and MP 36.0 during the period from August 28 through October 2, 2000.

The Organization argues that because the work in question was not new construction, it belonged to the Claimants. The Organization maintains that the Carrier therefore should be required to pay the Claimants for the loss of this work opportunity.

The Organization further argues that System Signal Construction Gangs were established for the purpose of performing construction work throughout the Carrier's system on the former B&O, and the above mentioned Agreements specifically distinguish between construction work and maintenance work. The Organization emphasizes that the Agreement makes it clear that construction work is reserved for System Signal Construction Gangs, while maintenance work is reserved for maintenance forces, as in the instant case. The Organization points out that the Agreement states that construction work is limited to work that "involves the installation of new equipment and systems and the major revision of existing systems." The Agreement further provides that the regular work of System Signal Construction Gangs does not include work that "involves maintaining existing equipment or systems," such as the work at issue here. The Organization maintains that although CSXT Labor Agreement No. 15-18-94 allows System Signal Construction Gangs to perform some repair work on existing systems, this is limited to damage caused by floods, derailments, and other emergencies. The Organization asserts that the Carrier has not cited the existence of any emergency in this matter. The Organization therefore argues that the definition of "construction work" in the Agreement cannot be extended

to cover the work in question. The Carrier violated the Agreement when it improperly deprived the Claimants of the opportunity to perform this work.

The Organization then argues that there is no relevance to the Carrier's assertion that the System Signal Construction Gangs were brought in to assist the Signal Maintainers to make permanent repairs to the pole line. The Organization contends that the Agreement is clear and concise in allowing System Signal Construction Gangs to "assist" employees of the former B&O only in an emergency or the replacement of existing signal equipment with new equipment. The System Signal Construction Gangs repaired and performed maintenance on existing equipment, and the Organization asserts that the Carrier has not provided proof otherwise. As for the Carrier's assertion that the Claimants were fully employed and observed vacation periods and other days that kept them from being available for service during the period in question, the Organization argues that this is completely unsubstantiated and is an unsupported fabrication. The Organization maintains that the Carrier has the burden of proving that the work at issue did not exclusively belong to the employees covered by CSXT Labor Agreement No. 15-18-94, whether Signalmen or Signal Maintainers. The Carrier failed to show that its use of System Signal Construction Gangs to perform the repair and maintenance work as issue was for anything but its own convenience. The Organization therefore contends that the Carrier violated the parties' Agreement.

The Organization asserts that the Agreement specifically provides that such work on existing equipment and systems belongs to Baltimore West End Seniority District personnel. Although the Agreement does allow for System Signal Construction Gangs to perform major revisions to existing systems, the work at issue was the repair and maintenance of the pole line and not the replacement or revision of the signal system. The Organization points out that the same pole line was used before and after the System Signal Construction Gangs performed the repair and maintenance work. The Organization contends that, consistent with Third Division Award 32802 on this same issue, the Carrier was obligated to assign this work to employees covered by the Agreement. The Carrier violated the Claimants' rights when they were denied the opportunity to perform the work.

Turning to the Carrier's assertion that no lost wages were incurred by any Signal Department employees in the affected area during the time in question, and that the claim was excessive, the Organization emphasizes that the Carrier did not have the right to divert maintenance work to System Signal Construction Gangs not covered by the Agreement. There is no evidence that the Carrier was unable to assign the

Claimants to perform this work on overtime, during regular assigned work hours, or on weekends, so it must be held that the Claimants were available and improperly deprived of a work opportunity that accrued to them by Agreement. The Organization argues that when employees are deprived of the opportunity to perform work reserved to them under the Agreement, the employees lose the wages they would have earned for doing that 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 repair 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 initially 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 vast majority of 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 Signalsman positions were eliminated as a result of the work at issue.

The Carrier maintains that the work performed by the System Signal Construction Gangs 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 Signal Construction Gangs to perform construction work as well as the major revision of existing systems. The Carrier asserts that the Organization's position in this case, that System Signal Construction Gangs cannot perform a major revision of an existing system, contradicts the clear language of the Agreement providing that construction work involves the "installation of new equipment and systems and the major revisions of existing systems."

The Carrier argues that when an entire territory, for 16 miles, is declared direct train control because of numerous signal failures, more than routine maintenance is required. The Carrier asserts that the work at issue was a significant project involving the installation of replacement equipment, and CSXT Labor Agreement No. 15-18-94 expressly allows the use of System Signal Construction Gangs to perform such work. The Carrier maintains that the only logical interpretation of the Agreement is that 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 be described only as a major revision of existing equipment or systems, which is the exact purpose of CSXT Labor Agreement No. 15-18-94. The Carrier argues that recent Awards have 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 contends that this matter is not about repairing one pole at one location, but rather involves replacing or repairing numerous signal items during a major project over 16 miles of territory, which requires an entirely different utilization of resources and dedication of personnel than is required for one Signal Maintainer to repair one damaged line pole. The Carrier further asserts that the Organization failed to establish that the work at issue was specifically reserved to the Claimants or any other employee represented by the Organization. The Carrier emphasizes that the Organization failed to make the required showing of specific Agreement language indicating such intent or exclusive performance on a system-wide basis.

The Carrier then points out that the Claimants have daily maintenance to perform on their territories, and they were fully employed at all times prior to and including the dates at issue. The Carrier argues that the Claimants are seeking a "windfall" payment, in that they suffered no loss of compensation. The Carrier therefore maintains that there is no basis for awarding the requested remedy.

The Board reviewed the record in this case, and finds that the Organization has shown with sufficient evidence that the Carrier violated the Agreement when it used System Signal Construction Gangs to perform maintenance on the Old Main Line Subdivision between Milepost 20.0 and Milepost 36.0 instead of using the signal employees from the Baltimore West End Seniority District during the period August 28 through October 2, 2000. The Organization has shown that the work in question did not constitute new construction and therefore should have been performed by the Claimants. The Board has no choice but to sustain the claim.

The Organization has shown that the work in question is reserved to the Baltimore West End Seniority District. The System Signal Construction Gangs were established for the purpose of performing construction work and the work in question was not construction work but simply involved maintenance of existing equipment or systems. Also, there was no emergency that the Carrier has claimed. The Carrier contends that the construction teams were brought on the property "to assist the

maintainers to make permanent repairs to the pole line.” But, the System Signal Construction Gangs are only to be there for installation of new equipment and systems and the major revision of existing systems. The work that was performed here did not fit into those categories. The Agreement states that work on existing equipment and systems belong to the Baltimore West End Seniority District.

Once the Board has determined that there is sufficient evidence to support the finding that the Carrier violated the Agreement, we next turn our attention to the type of remedy requested by the Organization. The Carrier asserted that there were no lost wages incurred by the Claimants. However, the Organization is correct that the Carrier did not have the right to divert the maintenance work to System Signal Construction Gangs who were not covered by the Agreement. There is no evidence to support the Carrier’s position that it was unable to assign the Claimants to perform this work on overtime, or on regular work hours or weekends. Therefore, we find that the Claimants were improperly deprived of the work opportunity that accrued to them by the Agreement. When employees are deprived of the opportunity to perform work, they lose the wages they would have earned for doing that same work and are entitled to recover for the loss. See Third Division Awards 20633, 29232 and 32993. Those Awards make it clear that if claimants lose the rightful opportunity to perform work, they are entitled to monetary relief.

The Board recognizes that there have been a multitude of Awards dealing with this subject matter where the claims have been denied. In the unique circumstances of this case, a Carrier representative admitted in the quote cited above that the System Signal Construction Gangs were brought on the property “to assist the maintainers to make permanent repairs.” (Emphasis added) That admission distinguishes this case from all of the other cases which the Board finds were properly denied. This case is an anomaly.

For all of the above reasons, the claim must be sustained.

AWARD

Claim sustained.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of April 2005.