

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 37485  
Docket No. SG-37017  
05-3-01-3-642

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 Signal 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 270 hours at the straight time rate and 90 hours at the time and one half rate. This amount to 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 September 2, 2000, between Mileposts 38.8 and 64.5 on the Old Main Line Subdivision. This action deprived the Claimants of the opportunity to perform this work. Carrier File No. 15 (01-0016). General Chairman's File No. BWE-03-01. BRS File Case No. 11842-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 22, 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 Gang 7X19 to perform maintenance work on an existing pole line on the Old Main Line Subdivision between MP 38.8 and MP 64.5 during the period from August 28 through September 2, 2000.

The Organization argues that because the work in question did not constitute construction, it accrued to the Claimants under the Agreement. 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." The Organization emphasizes that the work in dispute was neither installation of new equipment, nor a major revision of an existing system, and the Agreement clearly provides that maintenance work accrues to maintenance forces and not to System Signal Construction Gangs. The Organization asserts that the Carrier therefore violated the Agreement when it improperly diverted this work to the System Signal Construction Gang and deprived the Claimants of the opportunity to perform it.

Addressing the Carrier's assertions in this matter, the Organization contends that nothing in the record shows that the Claimants could not have performed the work

in question. The Organization argues that the central issue in this dispute is whether such work accrues to the maintenance forces covered by this Agreement, to the exclusion of the System Signal Construction Gangs. Accordingly, the Carrier's assertions should be dismissed. The Organization asserts that the record shows that the disputed work was performed for the purpose of maintaining and repairing the pole line, so this work accrued to maintenance forces, not System Signal Construction Gang forces, in accordance with CSXT Labor Agreement No. 15-18-94. That Agreement prohibits the Carrier from diverting maintenance work to construction forces, and it points to Third Division Award 32802 which the Organization claims shows recognition of a clear differentiation between construction work and maintenance work. The Organization argues that the Carrier was obligated to assign the work in question to maintenance forces on the Baltimore West End Seniority District, and not to a System Signal Construction Gang.

The Organization then points to the Carrier's contention that no lost wages were incurred by any Signal Department employee during the time the pole line work in question was performed and that the claim was excessive. The Organization maintains that the Carrier's assertions on this point must be dismissed. Nothing in the record indicates that the Claimants could not have been assigned to perform this work during regular assigned hours or on overtime, as the Carrier has done in the past. The Carrier does not have the right to divert maintenance work to System Signal Construction Gangs. The Organization argues that it must be held that the Claimants were available, and that they improperly were deprived of a work opportunity that accrued to them by Agreement.

The Organization goes on to argue that it is well established that when employees are deprived of a work opportunity 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 Claimants had a contractual right to the work in question, and they improperly were deprived of a valuable work opportunity. The System Signal Construction Gang was performing maintenance and repair work in violation of CSXT Labor Agreement No. 15-18-94, and the Carrier violated that Agreement when it allowed construction forces to perform maintenance work on the Claimants' assigned seniority district.

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 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 Signaller positions were eliminated as a result of the work at issue.

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 Signal Construction Gangs to perform construction work. 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 "installation of new equipment and systems and the major revisions of existing systems."

The Carrier argues that when an entire territory, for 26 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, the System Signal Construction Gang was used to perform work that can be described only as a 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 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 26 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 points out that an assignment of work to a position does not confer exclusivity of work to that position. The Carrier maintains that the Organization failed to establish that the disputed work is reserved to the Claimants, either pursuant to the language of the Agreement or through custom, practice, or tradition.

The Carrier then points out that the Claimants have daily maintenance to perform on their territories, and were fully employed at all times prior to and including the dates at issue. The Carrier argues that the Claimants suffered no loss of compensation, so there is no basis for awarding the requested remedy.

The Board reviewed the record in this case, and finds that there is sufficient evidence to support the Organization's position that the Carrier violated the Agreement between the parties when between August 28 through September 2, 2000, the Carrier utilized a System Signal Construction Gang to perform maintenance work on the pole line on the Old Main Line Subdivision between Milepost 38.8 and Milepost 64.5 instead of using Signalmen from the Baltimore West End Seniority District for that same work. Therefore, the claim must be sustained.

The record makes it clear that the work involved did not constitute construction work, nor did it involve installation of new equipment and systems or a major revision to an existing system. The record reveals that maintenance work had to be performed on the existing pole line and that, according to the Regional Engineer, the construction teams "were brought on the property to assist the Signal Maintainers" to make those repairs. That same Regional Engineer stated in a letter dated December 1, 2000, that the construction team was "helping the maintenance team to restore the code line back into a reliable working condition." The Board finds that that work constitutes maintenance work and should have been assigned to the Claimants pursuant to the terms of the Agreement.

The Board thoroughly reviewed the record and has come to the same conclusion in this matter. The work involved here was maintenance work and it should have been assigned to the Claimants.

Once the Board has determined that there is sufficient evidence to support the finding of a violation, we next turn our attention to the type of remedy sought by the Organization. The Board has held on several occasions that when employees are deprived of the opportunity to perform work that is reserved to them under the Agreement, those employees have lost wages that they would have earned for doing that

same work and they are entitled to recover for the loss. In Third Division Award 29232, we held:

“We agree with the Organization that Claimants are due compensation despite the fact they worked and received compensation on the claim dates. Claimants in fact did lose work opportunities due to the Carrier’s violation of the Agreement, and this type of claim long has been viewed as a proper device to police the Agreement.”

We also held in Third Division Award 20633 that:

“Carrier argues that the Board is without authority to award damages and that Claimant suffered no loss of earnings. This issue has been dealt with in depth in Award 19899 and also in Awards 19924 and 20338, as well as in numerous other Awards. We shall reiterate the principle enunciated in those Awards that since Claimants lost their rightful opportunity to perform the work, they are entitled to a monetary claim.”

The Board finds that the Carrier violated the Agreement when it used a System Signal Construction Gang to perform maintenance work on the signal system between Milepost 38.8 and Milepost 64.5 from August 28 through September 2, 2000. The work in question was maintenance and repair work to an existing pole line and that work should have been performed by the maintenance forces.

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 Gang was brought on the property “to assist the maintainers to make permanent repairs.” (Emphasis added) That admission distinguishes this case from all of the others. This case differs 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.

Form 1  
Page 7

Award No. 37485  
Docket No. SG-37017  
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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.**