

****CORRECTED****

**Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37876
Docket No. SG-37706
06-3-03-3-55**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

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

STATEMENT OF CLAIM:

“Claim on behalf of W. M. Sheckles, Jr., M. T. Gaver, V. K. Kennedy, B. L. Watkins, M. A. Tarleton, T. E. Painter, J. L. Eagle, Jr. and R. W. Graves, for 675 hours at the straight time rate of pay to be divided equally among the Claimants, account Carrier violated the current Signalmen’s Agreement, particularly CSXT Labor Agreement 15-18-94, when it allowed construction forces on System Gang #7X19 to replace TC Green wire at West Plane Signal location on the Old Main Line Sub-Division from November 28 through December 21, 2001, and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 15(02-0064). General Chairman’s File No. BME-02-04-02. BRS File Case No. 12399-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 claim of the Organization is that the Carrier violated CSXT Labor Agreement No. 15-18-94, and the November 17, 1994 Side Letter No. 2, when it assigned work to the System Signal Construction Gang, rather than the signal employees assigned to that district. Specifically, the Organization argues that the maintenance work performed was the rewiring of existing TC Green wire at West Plane on the Old Main Line Subdivision. The work of that location belonged to the signal employees from the Baltimore West End Seniority District. They had previously been working to replace the wire in early 2001, but were pulled off the job before completion.

It is the Organization's position that when System Signal Construction Gang No. 7X19 was brought in on November 28, 2001, continuing through December 21, 2001, to perform this maintenance work, the Agreements were violated. In pertinent part, CSXT Labor Agreement No. 15-18-94 and Side Letter No. 2 state:

"CSXT Labor Agreement No. 15-18-94

Construction Work – That work which involves the installation of new equipment and systems and the major revision of existing systems, and not 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.

Side Letter No. 2

As stated throughout the negotiations, it is not the Carrier's intent to eliminate Independent Signal Maintainer Positions (Maintainers on WM) or Maintenance Gangs and establish System Signal Construction Gangs in their place. Should the Organization believe the Carrier to be violating the intent of this Agreement by undertaking the aforementioned, the Organization and the Carrier will meet to discuss the matter."

The Organization argues that the work in question was maintenance work and did not belong to System Signal Construction Gangs.

The Carrier did not deny that the work was performed by the System Signal Construction Gang, rather than local Signal Maintenance forces. However, it strongly denied any Agreement violation. The Carrier argued that the local forces had removed some TC Green wire earlier in the year, as that was a small project. The actual work required a sustained and timely completion of replacing existing signal wires that had been identified as a Federal Railroad Administration defect some two years earlier. The Carrier maintains that this was an emergency and well within its right under the Agreements to perform with System Signal Construction Gangs.

The Board reviewed the on-property record. Central to our decision is the Carrier's position that it violated no aspect of the Agreement due to the fact that:

"The Agreement defines construction work as work that involves the installation of new equipment and systems and emergency repairs, such as the large scale replacement of defective signal cables (TC Green) to existing systems, not the normal routine maintenance required to have existing systems operating at maximum efficiency."

There is nothing in this record presented by the Organization to effectively rebut the Carrier's position. There is no denial that the work remained defective for two years and was a large scale project. There is no rebuttal to the Carrier's argument that the signal system had defects identified by the Federal Railroad

Administration that had to be timely repaired and required the existing system to be placed out of service while the TC Green wiring was replaced. Most importantly, there is nothing in this record presented by the Organization to persuade the Board that the work was routine maintenance and not an emergency repair.

The Organization presented no proof that this was routine and could, or even should have been performed by local Signal Maintenance forces. No letters, statements or evidence is in this record documenting that the instant work had ever been performed by the local point-headquartered Signalmen. The Organization had ample opportunity to document that the work performed earlier in 2001 was equivalent in time and scope to the "emergency repairs" of such "large scale replacement" as argued by the Carrier. There is no proof of this fact in the record.

Accordingly, this claim resembles the numerous claims decided by the Board in prior Awards. There is no proof that this was routine maintenance or evidence to rebut the Carrier's position that it was a large scale emergency repair. For the above stated reasons, the claim is denied (Third Division Awards 37520, 37334, 37333, 37250, 37125, 36862, 36861).

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 1st day of August 2006.