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NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37877
Docket No. SG-37711
06-3-03-3-37

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 and
(Ohio Railroad 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 40 hours at the straight time rate of pay and 50 hours time and one-half, to be divided equally among the Claimants, account Carrier violated the current Signalmen's Agreement, particularly CSXT Labor Agreement 15-18-94, and Side Letter No. 2, when it used System Signal Construction forces to replace existing signal cables on the Metropolitan Sub-Division at Brunswick, Maryland, Mile Post 75.5, on October 25 and 26, 2001 and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15(02-0050). General Chairman's File No. BME-01-03-02. BRS File Case No. 12403-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.

By letter dated December 8, 2001, the Organization alleged the Carrier's violation of CSXT Labor Agreement No. 15-18-94, particularly the definition of System Signal Construction Gangs, their purpose and what constitutes "construction work." The violation claimed by the Organization was due to the Carrier utilizing System Signal Construction Gang Nos. 7X13 and 7X15 to install new cables on October 25 and 26, 2001 at the W. B. Tower at MP 75.5.

The language at the center of the dispute comes from CSXT Labor Agreement No. 15-18-94. It states in pertinent part:

"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.

System Signal Construction Gang – A gang used to perform year round construction work throughout the territory covered by the B&O Agreement."

The Organization argues that the work performed was work that did not belong to the System Signal Construction Gangs, but was work that belonged to district forces holding Baltimore West End seniority.

The Carrier argued that what was assigned to these two System Signal Construction Gangs was the replacing of existing signal cables. It held an "emergency existed when the signal system was suspended after finding signal cable grounded and not within FRA and CSXT accepted tolerances." In short, the Carrier maintains that this was an emergency.

The Board carefully reviewed this record. The Carrier claimed that it was an emergency because the "signal system was suspended" due to discovery of serious problems which required new cables. The Organization stated that it was not an emergency arguing only that the work was known through routine signal inspections a full year in advance. Our review of the record finds no probative evidence to effectively rebut the Carrier's emergency defense. Nor is there any proof that the work performed was routine maintenance of existing systems.

Additionally, the Board finds that the issue at bar has been considered in one form or another countless times (Third Division Awards 37520, 37485, 37484, 37334, 37333, 37286, 37250, 37249, 37194, 37125, 37122, 31116 and others). In Awards 37484 and 37485, the Board sustained the claims; but the Board finds that the overwhelming Award history supports dismissal of this claim, rather than denial. Unless the Organization can come up with proof that the work performed by the Carrier was work that "involves maintaining existing equipment or systems," which is that work routinely performed by division forces, it is proper for System Signal Construction forces to do the work. This has been found by an extensive line of Awards. This Referee has previously considered this issue in Third Division Awards 36861 and 36862. Other Referees have issued Awards reviewing different circumstances, but the identical issue between these same parties and similarly denied the Organization's claims (Third Division Awards 37114, 37111, 37109, 37014, 36691, 36681, 36679, 36634, 36363, 36206 and others).

Accordingly, the Board considered the doctrine of stare decisis in its decision. In stare decisis, meaning "precedent" the principle is that there are enough decisions already; that parties in future conflicts should understand what the outcome will be, as a long line of cases dictates the precedent. The Board read all of the preceding Awards and more. We find that these are the same parties, with the same contractual Agreement (CSXT Labor Agreement No. 15-18-94) rearguing similar disputes. Therefore, we will dismiss this claim as barred under the doctrine of stare decisis.

AWARD

Claim dismissed.

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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.