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NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37879
Docket No. SG-37788
06-3-03-3-148

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 350 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, and Side Letter No. 2, when it assigned System Signal Construction Gangs, 7X18 and 7XF3, to perform the maintenance work of replacing existing signal cables at Mile Post 75.5, W. B. Tower, from December 17 through December 21, 2001, and January 28 and 29, 2002, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 15(02-0081). General Chairman's File No. BME-01-05-02. BRS File Case No. 12534-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.

As background, the Carrier assigned System Signal Construction Gangs to replace existing signal cables at the WB Tower at MP 75 on the Metropolitan Subdivision. The Organization filed claim by letter dated February 16, 2002, asserting that the work performed by System Signal Construction Gangs 7X18 and 7XF3 violated CSXT Labor Agreement No. 15-18-94, when it was not assigned to the signal employees who were point-headquartered at that location.

This issue has already been considered. The Board finds that this is the same location, parties, Claimants, Agreement, issues and facts that were before us in Third Division Award 37877. The only differences are the dates involved. Otherwise, the Board can find no essential elements that would need consideration. The question before us remains the same. Does the Carrier have the right to perform major repair or is this maintenance? In this claim the Carrier stated in pertinent part:

“The System Construction forces were brought in to rectify this emergency situation. Due to the environmental issues of diesel fuel on the ground, the enormity of the project, this project was assigned to the System Construction.”

There is nothing in this record that disputes the “enormity” of the project. More to the point, there is no probative evidence to support the Organization’s claim that this is “routine” signal maintenance work. The Board finds that this was emergency work, construction work, and not routine maintenance work.

Because this is an issue previously settled by Third Division Award 37877, we will dismiss the claim at bar under the doctrine of res judicata, as suggested by the Carrier in its letter of December 19, 2002. This claim has previously been resolved and, therefore, is dismissed.

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AWARD

Claim dismissed.

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.