

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37911
Docket No. SG-38266
06-3-04-3-179

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

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

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (formerly Baltimore & Ohio):

CASE A

Claim on behalf of T. B. Able, S. E. Adams, W. E. Baudendistel, D. W. Fullenkamp, C. P. Heitzer, G. M. Kerrigan, C. M. Kreuzer, T. J. Rich and J. L. Smith, for compensation of 92 hours pay at the Lead Maintainer's rate (which includes STS and TVA); 8 hours at the time and one-half rate, and \$406.16 for the FTV and EXR; Compensation for the Signalmen's position is 92 hours pay at the Signalman's rate (which included STS and TVA), 8 hours at the time and one-half rate, and \$406.16 for the FTV and EXR; these sums are to be divided equally between the Claimants. This is for pay periods ending 08-09-02 and 08-16-02; and is an open-ended claim and will be updated as necessary, account Carrier violated the current Signalmen's Agreement, particularly the "SCOPE" and Rule 30, when it allowed signal maintenance forces from another seniority district to work on the Toledo-Indianapolis seniority district cutting brush from the pole line. Carrier also violated the Agreement by not maintaining an adequate work force to meet the requirement of the service. Carrier's

File No. 15(02-0174). General Chairman's File No. TI-01-12-02. BRS
File Case No. 12953-B&O.

CASE B

Claim on behalf of T. B. Able, S. E. Adams, W. E. Baudendistel, D. W. Fullenkamp, C. P. Heitzer, G. M. Kerrigan, C. M. Kreuzer, T. J. Rich and J. L. Smith, for compensation of 92 hours pay at the Lead Maintainer's rate (which includes STS and TVA); 8 hours at the time and one-half rate, and \$406.16 for the FTV and EXR; Compensation for the Signalmen's position is 126.5 hours pay at the Signalman's rate (which includes STS and TVA) 12 hours at the time and one-half rate, and \$571.35 for the FTV and EXR; these sums are to be divided equally between the Claimants. This claim is for pay periods ending 08-23-02, 08-30-02 and 09-06-02; and is a continuation of claim 19-02, an open-ended claim and will be updated as necessary, account Carrier violated the current Signalmen's Agreement, particularly the "SCOPE" and Rule 30, when it allowed signal maintenance forces from another seniority district to work on the Toledo-Indianapolis seniority district cutting brush from the pole line. Carrier also violated the Agreement by not maintaining an adequate work force to meet the requirement of the service. Carrier's File No. 15(02-0176). General Chairman's File No. TI-03-12-02. BRS File Case No. 12954-B&O.

CASE C

Claim on behalf of T. B. Able, S. E. Adams, W. E. Baudendistel, D. W. Fullenkamp, C. P. Heitzer, G. M. Kerrigan, C. M. Kreuzer, T. J. Rich and J. L. Smith, for compensation of 160.5 hours pay at the Lead Maintainer's rate (which includes STS and TVA); 12 hours at the time and one-half rate, and \$736.54 for the FTV and EXR; Compensation for the Signalmen's position is 183 hours pay at the Signalman's rate (which includes STS and TVA), 12 hours at the time and one-half rate, and \$812.32 for the FTV and EXR; these sums are to be divided equally between the Claimants. This claim for pay periods ending 09-13-02, 09-20-02, 09-27-02, and 10-14-02;

and is a continuation of claims 19-02 and 22-02 which are open-ended claims, and will be updated as necessary, account Carrier violated the current Signalmen's Agreement, particularly the "SCOPE" and Rule 30, when it allowed signal maintenance forces from another seniority district to work on the Toledo-Indianapolis seniority district cutting brush from the pole line. Carrier also violated the Agreement by not maintaining an adequate work force to meet the requirement of the service. Carrier's File No. 15(02-0180). General Chairman's File No. TI-05-12-02. BRS File Case No. 12956-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 Claimants in these three claims were, at the time this dispute arose, assigned to a Signal Maintenance Gang on the former Toledo Subdivision. During the period covered by the claims, the Carrier used a Signal Maintenance Gang headquartered at Washington, Indiana, on the former Indiana Subdivision to cut brush from pole lines on the Toledo Subdivision. These claims contend that the Signal Maintenance Gang from Washington, Indiana, consisted of employees from a prior rights seniority district adjacent to the Claimants' prior rights seniority district who had no right to be used on the Claimants' district.

The record clearly shows that effective December 1, 1994, the parties agreed to the creation of system seniority for all Signal Department employees in which

they combined all of the 18 separate prior seniority districts into one seniority district covering the entire B&O System. Thereafter, the Carrier had the right to utilize its Signal Department employees anywhere within the B&O System in accordance with the terms and conditions of the 1994 Agreement.

In this instance, the Signal Maintenance Gang from Washington, Indiana, was working within its newly-created system territory and its use did not infringe upon any prior seniority rights that may have applied to the Claimants to the exclusion of others.

The Carrier is correct in its assertion that:

"The prior rights districts do not act as a barrier to performing the work of either Signal Construction or Signal Maintenance."

The obvious intent and purpose of the 1994 Agreement was to give the Carrier the option and opportunity to use its Signal Department forces over the entire System territory. This conclusion is supported by the Opinion and Award set forth in a somewhat similar case found in Third Division Award 31719, which held:

"On December 10, 1982, the parties signed a Memorandum Agreement effective January 1, 1983. The Agreement eliminated the White River Seniority District. A portion of the District was merged into the Arkansas Seniority District and the remainder was merged into the Joplin Seniority District. Employees in the White River Seniority District were dovetailed into the seniority lists of the Arkansas or Joplin Districts, depending on where they were headquartered. The Agreement further provided:

'Employees holding seniority of the District immediately prior to the effective date of this Agreement will retain prior rights to all positions working on the territory presently comprising the District irrespective of whether these positions are located on the Arkansas or Joplin Seniority Districts. It further is understood that so long as an employee retains these prior rights, he cannot be displaced from

positions on the territory comprising the District by Arkansas, Eastern District, or Joplin Seniority District employes. He also cannot be compelled to work outside the territory comprising the District without the payment of actual necessary expenses.'

From January 3, through January 24, 1992, Carrier assigned employees from Arkansas Division Surfacing Gang 1035 to perform work located in that portion of the Arkansas Division which had previously been part of the White River Seniority District. The Organization maintains that this assignment violated Claimants' prior rights under the Memorandum Agreement.

Carrier denies that any violation occurred. In Carrier's view, it properly used employees holding seniority in the Arkansas Division to perform work in the Arkansas Division. Carrier contends that the Memorandum Agreement gave employees who held seniority in the White River District protection against displacement from positions in the former White River District and prior rights to jobs bulletined, but not an exclusive right to perform all work in the former White River District.

After careful consideration, the Board agrees with Carrier that no violation occurred. The prior rights referred to in the Memorandum Agreement were the seniority rights that the employees had enjoyed on the former White River District. There is no indication that the Agreement provided for exclusivity and precluded Arkansas Division employees from performing any work in the portion of the expanded Arkansas Division that was located previously in the White River District. Claimants were not displaced and there is no indication that their prior seniority rights were infringed in any other way."

The same logic and reasoning applies here.

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There is no proof found in this record to support a conclusion that any Rule violation occurred. Therefore, the claims as presented are denied.

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 22nd day of August 2006.

Labor Members Dissent
Third Division Award 37911
Docket No. SG – 38266
Referee: James E. Mason

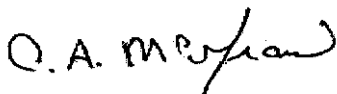
The majority is only partly correct regarding the facts of this case. This misinterpretation has lead to an erroneous interpretation of the Agreement. Effective December 1, 1994 (CSXT Labor Agreement No. 15-18-94) all Signal Department employees, already working on the B&O on one of the (18) separate Seniority Districts, were given a seniority position on the newly created System Seniority Roster. Employees hired after December 1, 1994 were placed on the System Roster only. This newly created System Seniority Roster was designed for Signal Employees to bid on positions in Maintenance and Construction.

There is a distinct difference between, Maintenance and Construction on the B&O property, i.e., different supervisors, territory limits, scheduled straight time hours and various other benefits not available to employees in other classifications. In other words this Agreement gave Construction Employees many benefits that regular Maintenance Employees did not have such as working throughout the entire B&O System performing construction work.

Contrary to the Majority's findings Agreement 15-18-94 did not change and/or eliminate the requirement that the District Maintenance Employees on the (18) Maintenance Districts are limited to perform work only on the district to which assigned.

Based on the foregoing, we find that Third Division Award 37911 is palpably in error.

Respectfully Submitted,



C.A. McGraw, Labor Member