

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Patrick E. Casale
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(CSX Transportation, Inc.

STATEMENT OF CLAIM:

1. That at North and South Carolina on Carrier property on September 22, 1989 through October 6, 1989, CSX-T violated the provisions of the Controlling Labor Agreement when CSX-T assigned outside sources (Contractors, TCU Communications Workers, Clinchfield and former C & O, B & O Communication Maintainers, and other personnel) to perform (SCL) communications work, specifically constructing, installing, repairing, maintaining, inspecting, testing and removing of Company owned: communication lines and their supports, wires and cables, telephone telegraph, teletype, switchboards, communication equipment, together with all appurtenances, devices, apparatus and equipment necessary to said systems and devices as named herein, and other work generally recognized as Communications Maintainers' work instead of calling communications employees represented by the undersigned who were available for work on said dates.

2. That communications employees, A. W. Gillespie, ID #197687, S. R. Mathis, ID #197587, J. W. Messer, ID #175359, T. K. Dunkle, ID #197763, A. D. Williams, ID #175017, T. L. Richter, ID #187913, R. S. Cain, ID #122977, S. Bradshaw, ID #125140, J. B. Messer, ID #123681, P. W. Casale, ID #197590, and P. J. Crumpler, ID #195643, be compensated for five (5) hours each day September 22, 1989 through October 6, 1989 at the overtime rate account of outside sources assignment to perform (SCL) communications work was in violation of said rules on above listed dates.

FINDINGS:

The Second 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 employees 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 waived right of appearance at hearing thereon.

The basic facts in this case are set forth as follows: By letter dated November 21, 1989, the Organization filed a Claim wherein it contended that Carrier violated the Controlling Agreement when outside "sources" were assigned to communications work. Specifically, the Organization charged that Carrier violated Rule 29 (a), Assignment of Work and Rule 1(a), Classification of Work Rule - Communications Maintainer, when said sources were used, notwithstanding the availability of communication maintainers. By letter dated January 15, 1990, Carrier denied the Claim on the grounds that Claimants were under pay on the Claim dates and, in addition, working overtime and more important, an emergency condition (Hurricane Hugo) dictated the use of outside forces. By letter dated March 7, 1990, the Organization reiterated its initial Claim letter position, emphasizing in particular that Claimants were deprived of contractually provided work. As the Claim further progressed, the parties positions remained the same, but Carrier's denial letter of September 13, 1990, noted the payroll records for Claimants for the time period September 22, 1989, through October 6, 1989. It also referenced several Third Division Awards with respect to managerial latitude during emergency conditions. (See for example, Third Division Awards 12777, 13858, 13626, 19140 and 12299, et al). Notice of Ex Parte Submission was filed by one of the Claimants and said individual subsequently filed a formal submission. Carrier responded that Claimant lacked authority to appeal the Claim on behalf of the other nine Claimants. It cited Second Division Award 11104 and First Division Award 20953 as controlling authority. It also noted that except for one Claimant who was on vacation on four of the Claim dates, all the rest performed emergency service necessary to restore the communications system from September 22, 1989, through October 6, 1989.

In considering this case, the Board concurs with Carrier's position. To be sure, there is always a demarcation point when an emergency ceases and the contract foresquarely governs, but we find in this instance that a sustained serious emergency existed. Hurricane Hugo struck the Carolinas on September 20, 1989, and wreaked widespread devastation on Carrier's communications facilities. This systemic destruction necessitated extensive overtime usage of communications employees as well as the utilization of outside forces and communications employees from other points of the former SCL. We find nothing in the on-situs appeals correspondence to refute this emergency damage assessment and accordingly, consistent with the decisional precedents of the Board, we must find for Carrier. There is no evidence that Carrier's actions were designed to evade the application of the Controlling Agreement.

A W A R D

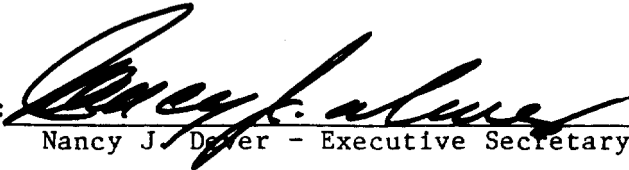
Claim denied.

Form 1
Page 3

Award No. 12267
Docket No. 12264-I
92-2-91-2-52

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1992.