

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 12643  
Docket No. 12377  
93-2-91-2-170

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division TCU  
(  
(CSX Transportation, Inc. (former  
(Chesapeake & Ohio Railway Company)

STATEMENT OF CLAIM:

- "1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter referred to as 'carrier') violated the service rights of Carmen D. Cole and D. L. Stephens (hereinafter 'claimants') and the provisions of Rules 11, 32 and 154 of the controlling Agreement when the carrier allowed an outside concern to perform Carman's work.
2. Accordingly, the claimants are entitled to be compensated for eight (8) hours at the applicable time and one-half rate for said violation."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

On May 6, 1989, Carrier contracted with the Scholtz Construction Company to install a mechanical car pusher on the transfer table at the Paint Facility in Raceland, Kentucky. The instant claim alleges that Rules 11, 32 and 154 were violated when the contractor was used to install this piece of equipment.

The identical issues, by the same parties, were presented to this Board in Second Division Award 12636. In denying the claim, we ruled that the Organization failed to meet its evidentiary

burden of showing that it was entitled to the work on the basis of either explicit contractual language or past practice. We adopt that same logic in the instant case and therefore rule to deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: *Catherine Loughrin*  
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 12th day of January 1994.