

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13549

Docket No. 13436

00-2-99-2-21

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

PARTIES TO DISPUTE: (**(Brotherhood Railway Carmen Division
(Transportation Communications International Union
(CSX Transportation, Inc. (former Baltimore and Ohio
(Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. That the Carrier did violate Rule 142 and 142½ of the Agreement when it failed to call Carmen for a yard derailment and employed an outside contractor with its ground forces to perform Carmen work within the yard limits.
2. That the Carrier be ordered to pay Claimants L. Whitson, E. Clark, B. Gaylord, J. Barnes, A. Steel, J. Allen and K.B. Robinson three (3) hours time and one-half rate of pay for this willful 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 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 instant claim challenges the use of an outside contractor to reraill one car that had derailed on January 6, 1998. The rerailling occurred at the Bulk Intermodal Distribution Services, Inc., (BIDS) Terminal in Cincinnati, Ohio. During handling on the property, the Carrier advised the Organization that the BIDS Terminal was not part of the Carrier's operation. The Organization did not request any further information or a copy of the lease covering the BIDS Terminal. Similar circumstances were presented in Special Board of Adjustment No. 1110, Award 19, where the Board stated:

"In the absence of any persuasive evidence that the Organization had sought any additional evidence of a lease between the Carrier and the Kentucky May Coal Company, the Carrier provided sufficient evidence to sustain its affirmative defense that a lease existed for the applicable area. As a result, the Organization lacked a contractual right to hold the Carrier responsible for the performance of the disputed work or for the failure of the Carrier to provide advance written notice of the performance of such work by outside forces for the Kentucky May Coal Company."

In accordance with Special Board of Adjustment No. 1110, Award 19, we hold that the Carrier in the instant case sustained its defense that the BIDS Terminal was not part of the Carrier and that the Carrier cannot be held liable for the performance of the disputed work.

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 Second Division**

Dated at Chicago, Illinois, this 29th day of September, 2000.