

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(The Chesapeake and Ohio Railway Company (Southern Region)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when, without a conference having been held as required by the October 24, 1957 Letter of Agreement, it assigned outside forces to perform roadbed stabilization work Mile Post 482.0 to Mile Post 483.5 on the Kanawha Sub-Division at Culloden, West Virginia beginning August 1, 1983 (System File MG-4310/C-TC-2005).

(2) Because of the aforesaid violation, each Maintenance of Way and Structures employe holding seniority rights as machine operator in Roadway Machine Operator Group on the West Virginia Division and/or the General Region Rosters shall be allowed pay at the Class 'A' Machine Operator's rate for an equal proportionate share of the Two Thousand Three Hundred Ninety-two (2,392) man-hours expended by outside forces in performing the work referred to in Part (1) hereof."

FINDINGS:

The Third 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 employes 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.

This is a dispute that arose after the Carrier contracted with an outside firm to stabilize slightly over one (1) mile of its roadbed on the Kanawha Subdivision at Culloden, West Virginia.

We have carefully reviewed the Submissions of the parties and find that what is basically controlling with respect to the evidence properly developed on the property is Rule 83(c) - Appendix "B". As we construe Appendix "B" it was agreed by the parties that the Carrier would discuss an asserted necessity to contract out Maintenance of Way work with the General Chairman. This was not done in the instant case. Accordingly, Part 1 of the claim is sustained.


With respect to Part 2 of the claim, we follow a long line of past Awards which have addressed the compensation issue in contracting out cases when all employees are fully employed and there has been no showing of actual loss of earnings, as in this case. Consequently, we deny that part of the claim.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 12th day of August 1988.