

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (Seaboard System Railroad)

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 between the Chief Engineering Officer and the General Chairman as required by Rule 2, it assigned work of the Maintenance of Way and Structures Department on the Lakeland Subdivision, Tampa Division, to outside forces on August 23, 28, September 6, 13, 16, 23 and October 7 and 8, 1985 [System File 37-SCL-85-42/12-2(85-339) I].

(2) Because of the aforesaid violation, Foreman R. E. Haught, Apprentice Foreman T. L. Roberson, Class III Machine Operator D. J. Watson and Trackmen K. L. Traywick, W. Knight, Jr. and K. Davis, Jr. shall each be allowed pay at their respective straight time rates for an equal proportionate share of the three hundred twenty (320) 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 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 are undisputed although the parties construe them very differently.

Without conducting a meeting between the General Chairman and the Chief Engineering Officer, Carrier contracted with an outside firm to place and compact asphalt paving material as part of the reconditioning of eleven road crossings on its Tampa Division between August 23 and October 8, 1985.

Other than the paving, all of the work on the track structure was performed by employees subject to the Agreement. Claimants were all fully employed throughout the duration of the disputed work.

The Organization cites the following Rules among those allegedly violated:

"Rule 1 Scope

These Rules cover the hours of service, wages and working conditions for all employees of the Maintenance of Way and Structures Department ***

Rule 2 Contracting

This Agreement requires that all maintenance work in the Maintenance of Way and Structures Department is to be performed by employees subject to this Agreement except it is recognized that, in specific instances, certain work that is to be performed requires special skills not possessed by the employees and the use of special equipment not owned by or available to the Carrier. In such instances, the Chief Engineering Officer and the General Chairman, will confer and reach an understanding setting forth the conditions under which the work will be performed."

The Organization contends that the disputed paving work was traditionally and historically assigned to and performed by Carrier employees.

The Carrier, diametrically opposed, says that the paving of road crossings has historically been performed by parties other than Railroad employees. It says the question to be decided is not whether Maintenance of Way employees have performed the work of paving road crossings, but rather, if they have exclusive rights thereto. Since the Organization did not have exclusive rights, Carrier had no obligation to meet and confer.

After a careful review of the record, the Board must disagree with the Carrier's position. The evidence establishes that the Organization and the Carrier have met frequently -- before, during and after the work in question -- on other projects involving asphalt paving that were contracted out. By this conduct, Carrier has shown paving work to be a proper subject of contracting discussions. Moreover, prior Awards of this Board have held that issues of exclusivity are not a defense to notice and meeting requirements. See, for example, Third Division Awards 27650, 26301 and 20020. Accordingly, Carrier violated the Agreement when it contracted the work without engaging in the required discussions.


The remaining question is whether there should be a monetary remedy. Since the Board finds that the Claimants did not lose any work opportunities as a result of the lack of notice or the contracting, there will be no monetary remedy. The remedy is limited to a finding that there was a technical violation of the Agreement.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1991.