

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 Employes
(
(CSX Transportation, Inc. (former 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 and/or permitted outside forces to perform paving work at the Joe McIntosh Road grade crossing located at Mile Post S-819.8 on the Yeoman Subdivision beginning May 29, 1987 [System File SFST36-87-75/12(87-899) Q].

(2) As a consequence of the aforesaid violation, Section Foreman W. H. Hodges, Apprentice Foreman D. R. Kinards, Machine Operator J. L. Merritt, Crankhand T. Scott, Jr. and Trackmen R. L. Standifer, E. Sanders and L. Sanders shall each be allowed eight (8) hours of pay at their respective straight time rates."

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 Claim arose when the Joe McIntosh Road was widened. This road serviced the plant of Florida Steel Corporation (FSC), and its widening required the reconstruction of the grade crossing at the point of intersection with Carrier's track. Carrier deployed its appropriate track gang for all elements of the reconstruction work except for the finishing work, which consisted of asphalt paving.

The parties raise a number of issues and contentions in connection with this work. Among them are whether the disputed work was covered by the Scope Rule, whether it was covered by the Contracting Rule and whether the Organization had exclusive rights to perform the work. The Board, however, based on a careful review of the record, finds these matters to be side issues. We find the determinative issue to be that of control.

There is no basis in the record to conclude that this project was "Carrier's work." The record shows that the work would not have been done if it had not been for Florida Steel Corporation's desire to have its service road widened. FSC initiated the work and absorbed all costs, including those of Carrier's track gang. In effect, Carrier was hired by FSC to perform work on the crossing. The record does not show any material benefit to Carrier's railroad operation, nor does it show Carrier had any control over the decision to have a contractor do the paving. According to the evidence, that arrangement was handled entirely between FSC and the contractor.

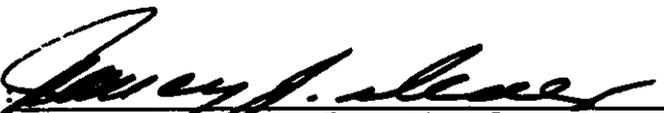
Overall, the evidence does not show that Carrier contracted out any of its work, nor does it show that Carrier was in control of the work. Prior decisions of this Board hold that no contracting of work violations exist under these circumstances. See, for example, Third Division Awards 26816, 26082 and 24078.

A W A R D

Claim denied.

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.