

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 Lake Weir road crossing located at Mile Post S. 739.7 on the Baldwin Subdivision beginning September 1, 1987 [System File SF5T25-87-97/12(87-1308) SSY].

(2) As a consequence of the aforesaid violation, Section Foreman A. M. Rish and Trackmen J. Jackson, A. Means and W. L. Smith 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.

The basic facts are undisputed.

Without conducting a meeting between the General Chairman and the Chief Engineering Officer, the Carrier contracted with an outside firm to place and compact asphalt paving material as part of the reconditioning of the Lake Weir road crossing in its Baldwin Subdivision on September 1, 1987. Other than the paving, all 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.

It is further understood and agreed that although it is not the intention of the company to contract construction work in the Maintenance of Way and Structures Department when company forces and equipment are adequate and available, it is recognized that under certain circumstances, contracting of such work may be necessary. 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 employees have performed the disputed type of work frequently in the past and that the

Carrier has recognized paving work is covered by the Agreement. Its May 19, 1988 letter, albeit pertaining to one of its other Divisions, interprets the same Rule 2 provisions in the manner the Organization urges. The letter, written to the Atlanta Division General Chairman, reads as follows:

"This will serve as notice of Carrier's desire to contract the asphalt paving of 43 grade crossings on the Abbeville Seniority District of the Atlanta Division. Contract of the aforementioned work is necessary due to the lack of equipment to perform said work.

This notice is in strict compliance with Carrier's obligation under the applicable Rules of Agreements. Please advise if conference is desired."

By this conduct, the 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, the Carrier violated the Agreement when it contracted the work on the Baldwin Subdivision 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. Dover - Executive Secretary

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