

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. (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 or otherwise permitted outside forces to construct a car loading ramp at Oldsmarr, Florida beginning in the second half of February through the first half of April 1987 [System File CLR/BJM/RWB-87-39/12 (87-697)].

(2) Because of the aforesaid violation, Carpenter Foreman C. Roberts, Carpenters B. J. Moore and R. W. Benson and Helper D. L. Sullivan, shall each be allowed pay for an equal proportionate share of the total number of man-hours consumed by the outside parties 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 employee 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 instant claim was filed on April 14, 1987. It asserted that outside forces were used to construct a car unloading ramp at Oldsmarr, Florida. The Carrier, in its response, acknowledged that a ramp had been constructed. However, it asserted that the construction was arranged for by Yakle Lumber Company. In appealing the claim further, the Organization did not dispute per se that Yakle arranged for the construction, but highlighted the fact that the ramp was on Carrier property and asserted it was "an instrument of usage by CSX." In the final declination the Carrier contended that the ramp in question was constructed by, paid for, and used exclusively by Yakle Lumber Company. There was no challenge to this assertion.

Form 1
Page 2

Award No. 29061
Docket No. MW-28506
91-3-88-3-314

In view of the fact that the Organization did not challenge the Carrier's assertion that it had no control over the project and that it was not for its benefit, the claim must be denied.

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 22nd day of November 1991.