

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29580
Docket No. MW-28844
93-3-89-3-243

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers 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 outside forces (Wayne Railroad Construction Company) to perform paving work on the road crossing at Mile Post S.755.09 on the Baldwin Subdivision on January 26, 1988 (System File SF5T25-88-23/12(88-522) SSY).

(2) As a consequence of the aforesaid violation, Section Foreman A. M. Rish, Apprentice Foreman J. V. Daughtry and Trackmen J. Jackson, Jr. and W. L. Smith shall each be allowed three (3) 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 employe 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.

On March 4, 1988, the Organization filed a claim alleging that Claimants were denied the opportunity to perform paving work when the Carrier hired an outside contractor to install blacktop. The Organization also contends that it was not properly given notice of the subcontracting work. The Organization argues, therefore, that the Carrier was in violation of Rule 2.

The Carrier denied the claim asserting that after the Claimants completed rehabilitation work at a road crossing at Mile Post S-755.09, the Carrier purchased asphalt from Wayne Railroad Construction Company, who paved the crossing. The Carrier contended that work of this type is not reserved exclusively for the Organization's members.

This Board has reviewed the record and we find that the Carrier did violate the Rule requiring that the Organization be given notice before any subcontracting and the General Chairman be given an opportunity to meet with the Carrier to discuss it. However, since the Claimants were fully scheduled with other work and were on duty and under pay, they suffered no monetary loss as a result of the action by the Carrier. Therefore, the claim will only be sustained in part.

Rule 2 states the following in Section 1:

"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 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. In such instances, consideration will be given by the Chief Engineering Officer and the General Chairman to performing by contract the grading, drainage and certain other Structures Department work of magnitude or requiring special skills not possessed by the employees, and the use of special equipment not owned by or available to the Carrier and to performing track work and other Structures Department work with Company forces."

This Board finds that when the Carrier made its decision to subcontract the blacktop work, it had an obligation to confer with the General Chairman and reach an understanding regarding the conditions of the subcontracted work.


The Carrier argues that the Organization has not shown that the Organization members have performed this type of work exclusively across the system. However, this is a subcontracting case, not a case involving other employees of the Carrier. Rule 2 does not require that the Carrier confer with the Organization only when the work to be performed is work that is exclusively performed by Organization members. If work requires special skills not possessed by the employees, or if the forces and equipment are not adequate and available, the Carrier can subcontract work that is customarily performed by the Organization members. In that case, there must be notice. In this case, there was not any notice. Therefore, the claim must be sustained in part.

As stated above, the record indicates that all the Claimants were fully employed on the dates in question and lost no work and suffered no monetary loss. Therefore, there will be no award of backpay.

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 9th day of March 1993.