

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30195
Docket No. MW-30167
94-3-91-3-605

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

(Brotherhood of Maintenance of Way Employees
(
PARTIES TO DISPUTE: (CSX Transportation, Inc. (former Chesapeake
(and Ohio Railway Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the
Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned outside forces (L. B. Foster Company) to dismantle and remove rail and ties within the Clifton Forge Yard, Clifton Forge, Virginia on September 22, 24, 25, 26, 27, 28, 29, October 1, 2, 3, 4 and 5, 1990 [System File C-TC- 7155/12(90-1100) COS].
- (2) The Carrier violated the Agreement when it assigned outside forces (L. B. Foster Company) to dismantle and remove trackage (crossties, plates, etc.) within the Clifton Forge Yard, Clifton Forge Virginia beginning September 24, 1990 and continuing [System File C-TC- 7137/12(90-10990)].
- (3) The Carrier violated the Agreement when it assigned outside forces (L. B. Foster Company) to dismantle and load crossties from the tracks on the Hump, at the Clifton Forge Yards, Clifton Forge, Virginia, on October 15, 16 and 17, 1990 [System File C-TC- 7176/12(90-1101)].
- (4) The Carrier violated the Agreement when it assigned outside forces (L. B. Foster Company) to remove and load crossties from the tracks on the Hump, at the Clifton Forge Yard, Clifton Forge, Virginia, on October 19 and 20, 1990 [System File C-TC-7183/12(90-1102)].
- (5) The Agreement was further violated when the Carrier failed to discuss the matter with the General Chairman prior to contracting out the work described in Parts (1), (2), (3) and (4) hereof, as required by the October 24, 1957 Letter of Agreement (Appendix B).

- (6) As a consequence of the violations referred to in Parts (1) and/or (5) above, Foreman J. VanBuren, Jr. and Trackmen C. Reynolds and D. Hanna shall each be allowed eighty (80) hours' pay at their respective straight time rates and sixty-four (64) hours' pay at their respective time and one-half rates.
- (7) As a consequence of the violations referred to in Parts (2) and/or (5) above, furloughed Maintenance of Way employees W. Childs and W. McKnight shall each be compensated at the applicable rate for an equal proportionate share of the total number of man-hours expended by the outside forces performing the aforesaid work beginning on September 24, 1990, and continuing.
- (8) As a consequence of the violations referred to in Parts (3) and/or (5) above, furloughed Maintenance of Way employee W. Nicely shall be allowed twenty-four (24) hours' pay at the applicable straight time rate and six(6) hours' pay at the applicable time and one-half rate.
- (9) As a consequence of the violations referred to in Parts (4) and/or (5) above, Foreman A. Baird and Trackmen C. Reynolds, D. Hanna and C. Feamster shall each be allowed sixteen (16) hours' pay at their respective straight time rates and four(4) hours' pay at their respective time and one-half 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.

The Carrier retired certain portions of its Clifton Forge Yard in Clifton Forge, Virginia, for lack of use during 1990. After Carrier forces removed all switches and turnouts connecting live tracks to the tracks to be retired, the Carrier, on August 1, 1990, entered into an "as is, where is" contract with L. B. Foster

Company in the amount of \$391,165. for the sale and removal of rail, ties, and other track materials. The L. B. Foster Company then dismantled and removed the track materials with its own employees. The Organization contends that the Claimants should have been called to dismantle the track.

This Board has held on numerous occasions, most recently in Third Division Awards 30080 and 30084, that the Scope Rule does not apply to work connected with removal from Carrier property of scrap materials it has sold to another enterprise under the terms of an "as is, where is" contract. Here the Carrier simply allowed the company which purchased the track to retrieve its own property, and we conclude that the Claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

Linda Woods
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.