Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30213
Docket No. MW-28558
94-3-88-3-388

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(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, without notifying or conferring with the General Chairman, as required by the October 24, 1957 Letter of Agreement (Appendix 'B'), it assigned outside forces to pave grade crossings beginning at Mile Post 0.3 and May 1, 1987 and continuing [System File C-TC-3858/12(87-778)].

(2) As a consequence of the aforesaid violation, Messrs. R.L. Scarberry and A.G. Maynard shall each be allowed pay at their respective straight time and overtime rates for an equal proportionate share of the total number of straight time and overtime man-hours expended by the outside forces performing the work referenced in Part (1) above with said time to be credited toward their vacation qualifying time."

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.

In this dispute, the Organization argues that Carrier violated the Agreement by assigning, without notice to or conference with the Organization, certain work to outside forces. This work involved paving grade crossings beginning at Mile Post 0.3 on May 1, 1987, and thereafter. The Organization contends that the work at issue is reserved to members of its craft by rule, custom, and practice.

Carrier acknowledges that it failed to give the required notice of its intent to subcontract, but argues that notice was unnecessary because (1) the work involved was not within the scope of the Agreement; (2) special equipment and expertise were necessary; (3) this work has been contracted out in the past.

We do not find Carrier's position persuasive. The pertinent Agreement reserves certain work to the employees and Appendix B to the October 24, 1957 Letter of Agreement between the parties specifies that Carrier will perform all maintenance of way work with unit employees except where special equipment is needed. It was agreed that Carrier would discuss any asserted necessity to deviate from that practice prior to contracting work out.

In this case, no notification was given even though it appears from the record that the employees arguably could have performed the disputed work. Whether it was practical to do so, or whether special equipment or expertise were needed, were issues which could have been discussed with the General Chairman. In the absence of notification or conference, the Board concludes that Carrier violated the provisions of the Agreement.

With regard to the remedy, this Board is of the view that damages should not be assessed where the Claimants suffered no loss. Since we cannot ascertain from the record whether Claimants were fully employed at the time the disputed work was performed, the parties are directed to review the appropriate records, and make that determination. If appropriate, Claimants shall be compensated at the straight time rate of pay for the actual hours of work performed by the Contractor.

AWARD

Claim sustained in accordance with the Findings.

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.