

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30945
Docket No. MW-29126
95-3-89-3-550

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn 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 remove and replace roadbed ballast on the Atlanta Division at Howell's Yard, Atlanta, Georgia from June 1 through and including June 9, 1988 [System File HY-88-53/12(88-948) SSY].
- (2) As a consequence of the violations referred to in Part (1) above, Claimants K. J. Turner, E. L. Thompson, G. P. Hallmon, C. Daniels, A. G. Hale, J. Rowland, Jr., C. Heard, C. E. Clements, H. Barfield, Jr., M. W. Young, E. T. Howell, W. R. King and J. M. Hodges shall each be allowed pay at their respective straight time and overtime rates for an equal proportionate share of the total number of man-hours expended by the outside contractor performing the work referred to in Part (1) above."

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 employee 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.

A complaint of a foul odor from the Carrier's Howell Yard resulted in the discovery of a bloodmeal and soy bean spillage from a prior derailment. The Carrier was given a 10 day compliance order for cleanup by the Fulton County Health Department. Rather than use its forces to remove and replace the roadbed ballast where the spill occurred, the Carrier utilized the services of a contractor. This claim followed on behalf of the 13 named Claimants.

The Carrier agreed to compensate ten of the named Claimants with a proportionate share of hours worked by the contractor's forces. However, the Carrier refused to compensate Claimants Turner, King and Hodges because those three individuals were utilized to perform the work in that they worked with the contractor's forces cleaning up the contaminated bloodmeal. All that is left of the claim, then, is the Organization's position that Claimants Turner, King and Hodges should receive the same kind of compensation paid to the other ten named Claimants.

The purpose of a remedy in a contract violation case is to make the affected employees whole. In these kinds of cases, often that is accomplished by awarding the affected employees an amount of wages to make up for a lost work opportunity.

With respect to Claimants Turner, King and Hodges, there was no lost work opportunity. Turner, King and Hodges performed the cleanup work. Those Claimants are not entitled to be compensated twice for the same work.

The claim will therefore be denied.

AWARD

Claim denied.

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of June 1995.