

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30948
Docket No. MW-30180
95-3-91-3-627

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 (Steel Processing Service, Inc.) to perform the maintenance work of dismantling track for the purpose of the Carrier retaining the material from Mile Posts S-564.3 to 593.4 [System File EWT-90-89/12(90-1114) SSY].
- (2) As a consequence of the aforesaid violation, the eight (8) Claimants*, as listed below, shall be compensated as follows:

* Foreman E. W. Tucker	\$919.34
Asst. Foreman C. I. Gray	\$891.55
Trackman R. Green	\$797.05
Trackman M. Taylor, Jr.	\$797.05
Trackman H. J. Murphy	\$797.05
Machine Operator L. B. Way	\$913.94
Welder J. D. Rushing	\$926.10
Welder Helper C. A. Waters	\$840.25"

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.

Without prior written notice to the Organization, Steel Processing Service, Inc. was hired by the Carrier to remove track from an abandoned section of track situated at points between Bladen and Seals, Georgia. According to the Organization, the work lasted from April 4 through October 18, 1990 and the removed materials (trackage, tie plates and joint bars) were shipped to either the Carrier's Rail Welding Plant in Nashville or to various Roadmasters' territories on the Tampa Division Seniority District.

The Organization contends the work was improperly contracted out. The Carrier asserts that the track was abandoned pursuant to ICC authority and the work involved therefore does not fall within the scope of the Agreement.

Notwithstanding the logic of the Organization's arguments, for purposes of stability we are obligated to follow Awards on the property which resolve similar issues and which are not palpably erroneous. The issues raised in this case have been decided on the property. We find that decision is not palpably in error. See Third Division Award 30716:

"The threshold issue which must first be resolved in this case, and which was properly raised in the handling of this case on the property, is whether the work in question falls within the scope of the Agreement. The Board has held in a long line of Awards that work on facilities owned by a Carrier, but used for purposes other than the operation or maintenance of the railroad, do not come under the Scope Rule of the Agreement. (See, e.g., Third Division Awards 19994, 19639, 19253, 9602, and 4783). In Third Division Award 12918, the Board stated:

'Since the agreements pertain to work of carrying on carrier's business as a common carrier, we must conclude that the work of dismantling and removing completely the abandoned property does not fall within the contemplation of the parties. This work cannot be considered maintenance, repair, or construction.'

In Third Division Award 19994, the Board stated:

'We are not persuaded by Petitioner's argument with respect to the continued ownership by Carrier of the salvaged rails and other material. The critical question is not the continued ownership of the salvaged rails and real property, but the purpose for which the work was intended; was the work performed related to the operation and/or maintenance of the railroad or not' We must conclude that work on abandoned facilities, even though Carrier retains ownership of the property, is not work contemplated by the parties to the Agreement and such work is not within the scope of the applicable schedule Agreement.'

In this case, the Carrier contracted out the dismantling of track on abandoned property. For the reasons discussed in Third Division Award 30716 and the Awards cited therein and for the same reasons also discussed in Third Division Award 30946, we have no choice but to deny the claim.

The fact that some materials were returned to the Carrier raises questions, but ultimately, on this property, that fact does not change the result. As set forth above, Award 30716 quotes at length from Award 19994 which finds that factor to be non-determinative. We are obligated to follow Award 30716.

AWARD

Claim denied.

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.