

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30963
Docket No. MW-29996
95-3-91-3-393

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
(Chesapeake and Ohio Railway Company)

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

- (1) The Agreement was violated when the Carrier assigned outside forces to perform track work (paving road crossings at Mile Posts 27.7, 28.2 and 28.6) in the vicinity of Whitesville, West Virginia on April 19, 1990 [System File C-TC-6098/12(90-575) COS].
- (2) The Agreement was further violated when the Carrier failed to timely and properly discuss the matter with the General Chairman in good faith prior to contracting out said work as required by the October 24, 1957 Letter of Agreement (Appendix "B").
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Trackman D. R. Venoy shall be allowed eight (8) hours of pay at his respective pro rata rate."

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.

By claim dated May 8, 1990, the Organization asserted that on April 19, 1990, contractors paved road crossings at MP 27.7, 28.2

and 28.6 near Whitesville, West Virginia, and further asserted that Claimant, a furloughed employee, could have been used to perform the work. The Organization also stated in the claim that the Carrier failed to notify the Organization of the contracting out in accord with Appendix B of the Agreement. With its denial of June 28, 1990, the Carrier tendered a copy of a letter dated April 17, 1990 notifying the Organization of the Carrier's intent to contract out the work. On the property, the Organization did not further address the notification question.

The October 24, 1957 Letter of Agreement (Appendix B) states, in part:

"... [I]t has been the policy of this company to perform all maintenance of way work covered by the Maintenance of Way Agreements with maintenance of way forces.... In each instance where it has been necessary to deviate from this practice in contracting such work, the Railway Company has discussed the matter with you as General Chairman before letting any such work to contract.

We expect to continue this practice in the future...."

The evidence before us as developed on the property shows that the Carrier gave the Organization notice of its intent to contract out the work and the Organization did not follow through with respect to requesting any discussions. We can go no further. After the Carrier pointed out that it gave the Organization notice of its intent to contract out the work, the Organization did not further address the notice issue on the property. It is too late for the Organization to now attack the timing of the notice in its Submission to this Board. That must be done on the property. The claim will be denied.

AWARD

Claim denied.

ORDER

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 26th day of July 1995.