

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30982
Docket No. MW-30775
95-3-92-3-574

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(CSX Transportation, Inc. (former
(Seaboard Coast Line Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when, beginning April 5, 1991, the Carrier removed and abolished its Stationary Force 6F02 and used outside contracting forces (C. S. Salvage), to the exclusion of Carrier Maintenance of Way forces, to perform work of dismantling and reclaiming materials of trackage between Timmonsville and Florence, South Carolina [System File CDP-91-52/12(91-1126) SSY].
- (2) The Carrier also violated Rule 2, Section 1 when it failed to confer with the General Chairman and reach an understanding prior to contracting out the work in question.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Foreman C. D. Polk and Track Laborers D. L. Johnson, E. Charles, Jr., J. L. O'Banner, F. L. Goodwin and C. Mumford, Jr. shall be allowed eight (8) hours' pay each day, Monday through Friday, at their respective straight time rate of pay; four (4) hours' pay each day, Monday through Friday, at their respective overtime rate of pay and twelve (12) hours' pay for each Saturday and Sunday at their respective overtime rate of pay beginning April 29, 1991 and continuing until the Carrier releases the contractor's forces and places Carrier's track employes on the job."

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.

Claimant C. Polk established and holds seniority as a Track Foreman in the Track Subdepartment on the Florence-Savannah Seniority District. Claimants D. Johnson, E. Charles, Jr., J. O'Banner, F. Goodwin and C. Mumford, Jr. established and hold seniority as Trackmen in the Track Subdepartment on same. Beginning September 25, 1989, Claimants were assigned to Extra Force 6F02 to perform work on track on the Orangeburg Subdivision, a portion of the Florence-Savannah Seniority District.

By Superintendent's Bulletin South:S-34, dated December 21, 1989, Carrier announced the abandonment of that portion of the Orangeburg Subdivision between MP AK295.17 at Florence, South Carolina, and MP AK304.38 at Timmonsville, South Carolina. Claimants were utilized to dismantle and recover materials from the subject track until April 5, 1990, at which time Extra Force 6F02 was abolished and Claimants were furloughed from Carrier's service. Carrier subsequently contracted with C & S Salvage to complete dismantling the abandoned track and complete the salvage work. It is not disputed that Carrier did not give Rule 2 notice to the General Chairman, nor engage in Rule 2 discussions with the Organization. On April 29, 1991, the subcontractor commenced the dismantling/salvage work which is the subject of this claim.

On June 21, 1991, the Organization submitted this claim, alleging that Carrier violated Rules 1, 2, 3, 4, 5, 8, 13, 20, 27, 40 and "any other rules which might be applicable when it utilized an outside Contractor to the exclusion of its own Maintenance of Way personnel," and did not afford the Organization notice of its intent to do so. The Organization further alleged that the area that C & S Salvage was removing was still "connected to the mainline and is still live trackage which is being utilized by CSX Supervisor personnel running trains on it."

Carrier denied the claim maintaining that:

"As is evidenced by the filing of the appropriate notice, the trackage made subject of your claim has been appropriately removed from service and as part of

Carrier's operating system. The abandonment of trackage which is not a part of the Carrier's operating system does not accrue to the Maintenance of Way Department and is not reserved to the exclusivity of Maintenance of Way employees."

Regarding the underlying facts, Carrier denied the Organization's assertions that the track remained "live," but the following assertions by the Organization remain undisputed on this record:

"... on September 25, 1989, Stationary Force 6F02 started taking up these tracks. This Force had a Foreman and five (5) trackmen working. They knocked off all Rail Anchors and piled them up, pulled all spikes, loaded all rail on the rail train and white-dotted the ties so they could be loaded into CSX Transportation gons, for future use on the CSX Transportation property.... This Force worked from September 25, 1989, until April 5, 1990, when it was abolished.... CSX Transportation advised its employees, up until two weeks prior to April 5, 1990, that they would be removing the ten-mile section from Timmonsville to Lynchburg, South Carolina. During the week of April 5, 1990, CSX advised its employees that they were short of man power, and would be letting a Contractor perform the work."

So far as the record shows, this was not "as is where is" salvage and removal of abandoned scrap track material by a Contractor-Purchaser, but rather dismantling of high grade used track material for recycling and reuse by and for Carrier. That fundamental fact distinguishes this case from that in our recent Third Division Award 30716 and the line of precedent cited therein. Carrier's removal of this work from the scope of the Agreement without at least the requisite notice and discussions under Rule 2 constituted a plain violation of Claimant's and the Organization's Agreement rights.

Finally, Carrier failed to address the issue of damages during handling on the property. It has long been held that the Board is restricted to evidence presented on the property. Carrier's belated attempt to argue the issue of damages in its Submission to this Board comes too late to be considered. Third Division Awards 27614 and 26593 are ample precedent for sustaining these claims for monetary damages.

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AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of July 1995.