

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31005
Docket No. MW-30248
95-3-91-3-712

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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 outside forces to perform right of way maintenance work (ditching, grading, etc.) on September 14 through 29, 1990 at Moncrief Yard in Jacksonville, Florida [System File MACHOP-90-83/12(90-75) SSY].
- (2) As a consequence of the aforesaid violation, Maintenance of Way General Machine Operators E. E. Hanson, T. C. Peirson, V. W. Parker, J. A. Goodwin and G. A. Mathews shall each be allowed pay at their respective straight time and overtime rates for an equal proportionate share of the ninety (90) straight time man-hours and seventy (70) overtime man-hours expended by the outside forces performing the work outlined 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.

The Carrier's Moncrief Yard includes a railroad switching yard and a locomotive maintenance and fueling station. As indicated by the Carrier, pollution abatement and control is:

"... accomplished through a system of concrete pads and 'drip' pans to retrieve and collect drippage and spillage from locomotive refueling operations. Moncrief Yard also includes a network of ditches and run-offs which converge upon an on-property wastewater facility. The wastewater treatment system consists of an oil and water separator followed by a two stage filter and an oil collection tank. The treated water is ultimately discharged into the St. Johns River."

Following an inspection, the Florida Department of Environmental Regulation issued a Consent Order in June 1990, requiring remedying of conditions involving discharge of waste and also soil and possible groundwater contamination. This required work and equipment to drain ditches and, after removal of the pollutants, further work to restore the area. For the actual work of removal and disposal of the oil contaminated soil from ditch bottoms and track areas, the Carrier engaged a contractor licensed by the federal Environmental Protection Agency and qualified in the removal and disposal of polluted material.

The Organization argues that the work could have been performed by Carrier forces and that Force #6T59 was improperly cut off when the contractor was brought in to perform the work.

During the claim handling procedure, the Carrier wrote to the Vice Chairman in pertinent part as follows:

"It has never been the Carrier's position in this dispute that the employees were not capable of performing this work; rather they do not possess the requisite qualifications per EPA guidelines to do it effectively.

A copy of these requirements were given to you during our conference of this claim on June 11, 1991, and we are at a loss to understand (in view of the requirements contained therein), how you can continue to take the position that we could have met the directives in the Consent Order by utilizing our employees."

Thereafter, it was not refuted by the Organization that legal obligations required the Carrier to use a qualified contractor to perform a portion of the pollution removal work and prohibited the use of Carrier forces for this purpose. The Board notes that Carrier forces were utilized on the project to prepare the area and then to restore it. Under these circumstances, the Board finds that prior discussion with the General Chairman, which apparently did not occur, could not have logically led to the use of other than a qualified contractor.

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.