

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31161
Docket No. MW-30658
95-3-92-3-425

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Consolidated Rail Corporation

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

- (1) The Agreement was violated when the Carrier assigned outside forces (CSX Transportation, Inc.) to perform switch relocation and repair work at South Street and Bories Street, near Mile Posts 17.5 and 14.6 on the Akron Branch, Akron, Ohio beginning July 30, 1990, through and including August 27, 1990 (System Docket MW-1851.)
- (2) The Agreement was further violated when the Carrier did not give the General Chairman prior written notification of its plan to assign said work to outside forces.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Foremen G. Gonzales, D. Jones, Vehicle Operator M. Lane, Welder J. Santangelo, Welder Helpers D. Petrella, J. Wheary and Class 2 Machine Operator W. Smith shall each be paid one hundred twenty (120) hours at their respective straight time rates of pay."

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.

On September 25, 1990, the Organization filed the instant claim on behalf of the Claimants cited above arguing that the Carrier assigned CSX forces to perform Maintenance of Way work on switches located on the Akron Branch at Mile Posts 17.5 and 14.6. The Organization contended that the Claimants were fully qualified, willing and available to do the work in question. Furthermore, the Organization argued that the Carrier never gave the General Chairman advance written notice of its intent to contract out the work that was customarily, historically, and traditionally performed by its Maintenance of Way employees.

The Carrier denied the claim contending that the portion of the railroad between Mile Post 11.48 and Mile Post 27.21 on the Akron Branch was sold to CSX, Inc. in Finance Docket No. 31432, dated September 12, 1989. Therefore, the Carrier argues that CSX, Inc. used its own employees to perform the work in question on tracks that it owned.

This Board has reviewed the record in this case, and we find that the Organization has not met its burden of proof that the Carrier violated the agreement when it assigned outside forces to perform the switch relocation and repair work set forth in the claim. The record reveals that the Carrier sold its interest in the portion of the Akron branch to CSX in 1989. The parties executed an Implementing Agreement on January 30, 1990.

The record also reveals that in February of 1990, the Organization filed a New York Dock claim on behalf of these Claimants, contending that they were aggrieved by the sale. That matter was subsequently resolved by a finding in the Carrier's favor.

Pursuant to the terms of the Sales Agreement, the CSX was responsible for relocating the switches for its own benefit. The record is clear that all of the work was performed on CSX property. This claim was initiated on September 25, 1990, eight months after the Implementing Agreement. The work was performed in July and August of 1990.

It is fundamental in cases of this kind that the Organization bears the burden of proof. This Board finds that the Organization has not met that burden and, therefore, the claim must be denied.

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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 September 1995.