

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31483
Docket No. MW-31374
96-3-93-3-353

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(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 it assigned three (3) employees of an outside concern (Crews Construction Company) to reconstruct road crossings at Jenkins, Gilmore, Lee and Brunel Streets in Waycross, Georgia on September 24 and 25, 1990 [System File 90-139/12(91-288) 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, Atlanta-Waycross Seniority District Maintenance of Way Track Subdepartment Group A employees R. M. Sapp, T. M. Stewart, W. J. Hornsby, R. L. Miller, D. E. Steedley, A. Long, J. M. Eunice, C. White, Jr., D. M. Dennis and J. D. Ray shall each be compensated at their appropriate pro-rata rates of pay for an equal proportionate share of the forty-eight (48) total man-hours expended by the outside forces in the performance of the subject work."

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.

As is obvious from the Statement of Claim, this grievance involves an alleged rules violation when Carrier contracted out the work of repairing several crossings. However, this contracting out claim strays from the norm in that the parties have a Rule different than the usual contracting out rule found in other such cases.

Rule 2 of the Agreement reads as follows:

"CONTRACTING

This Agreement requires that all maintenance work in the Maintenance of Way and Structures Department is to be performed by employees subject to this Agreement except it is recognized that, in specific instances, certain work that is to be performed requires special skills not possessed by the employees and the use of special equipment not owned by or available to the Carrier. In such instances, the Chief Engineering Officer and the General Chairman will confer and reach an understanding setting forth the conditions under which the work will be performed...."

Item 1 of the Statement of Claim is misleading as the outside contractor was hired to pave, with asphalt, crossings rebuilt by Carrier's Maintenance of Way personnel. This was clarified in the first exchange of letters in the on-property handling.

Repaving crossings is not a de novo issue between the parties as such disputes have previously been advanced to this Board for adjudication. Prior Awards have sustained all but one of the Organization's claims because the Carrier never notified the Organization of its intent to contract out. See Third Division Awards 30194, 29824, 29580, 29432, 29430, among others.

In this dispute, however, a notice was given as evidenced by the Organization's letter of March 16, 1993 to the Carrier wherein it stated:

"...Although a notice was served, such was tantamount (if not worse than) no notice...."

What was intended by the Organization when it wrote the aforequoted is unknown to this Board as nothing further has been said by either party regarding the notice. Without more, the Board can only find that a timely notice of intent to contract out was given the Organization.

In Item 2 of the Statement of Claim, it is alleged that the Carrier failed to confer and reach an understanding, but the Board is unable to determine which party defaulted on the requirement to conference. Again, all that is before this Board is a statement that a notice was served. However, the Petitioner before this Board is obligated to prove all facets of its claim, and it has not shown that Carrier was at fault for not conferring.

It is this Board's opinion, therefore, that this dispute is similar in many ways to the dispute between the parties resolved in Third Division Award 30608.

In that Award, the Board held as follows:

"At the outset, it is apparent from unrefuted evidence on the record that Carrier did comply with the notification provision of Rule 2 of the Agreement. With respect to the work at issue, this is not a case of first impression. In a similar case before this Board involving the same Parties (Third Division Award 29824) the Board held in pertinent part as follows:

'The second part of the Organization's claim--that the paving work at issue has been customarily and historically performed by Maintenance-of-Way employees throughout the railroad industry and is, therefore, scope covered work--has already been addressed in several prior Awards. As the Board held in Third Division Award 29432, there is a mixed practice on this property with respect to the performance of paving work. No evidence on this record suggests that the practice is no longer "mixed." Accordingly, the Board does not find that the work at issue is reserved to Maintenance-of-Way employees.'

There is no evidence on the record before the Board in the instant case to contravene the Board's holding in Award 29824. Accordingly, the instant claim is denied."

The aforequoted excerpt from Award 30608 is adopted herein and becomes a part of this Award.

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This Board will also deny this claim as:

"There is no evidence on the record before the Board in the instant case to contravene the Board's holding in Award 29824."

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 23rd day of May 1996.