

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31594
Docket No. MW-30811
96-3-92-3-611**

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 Atlanta and
(West Point Railroad Company)

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

- (1) The Agreement was violated when, beginning July 16, 1990 and continuing, the Carrier allowed or otherwise permitted a contractor (Elder Construction Company) to perform maintenance work of grading on Carrier's right of way in the vicinity of Mile Post YYG 83.0 near Greensboro, Georgia on the Georgia Subdivision of the Atlanta Division [System File 90-96(GA)/12(90-1069) AWP].
- (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, Roadway Machine Subdepartment employees Messrs. C. S. Fowler, D. P. Bohler, W. H. Cameron, R. B. Terrell, F. C. Sears, Jr., V. W. Jones and F. E. Scott shall each be allowed pay at their respective straight time rates and overtime rates for an equal proportionate share of the total number of man-hours expended by the contractor's forces performing 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.

On March 16, 1990, 13 of Carrier's coal cars derailed at MPYYG 87.0 on the Georgia Subdivision. The area alongside Carrier property, in which the derailment occurred, is privately owned pasture land. Carrier dragged the wrecked coal hoppers from the site, and placed them on the pasture land to be cut up.

After the cars were cut up and hauled away, an outside contractor (Elder & Sons) was called in and worked for 16 days cleaning up the derailment site. Carrier's use of the outside contractor to perform work which the Organization alleges it has historically performed, constitutes the gravamen of this dispute. Specifically, the contractor hauled mud and other debris and placed it back on CSX property.

The Organization submitted a claim asserting that:

"Beginning on Monday 16, 1990 and continuing, five employees of the above referenced Contractor started operating various earth moving equipment including, but not limited to, four bulldozers, one pan and two dump trucks to perform maintenance work of rebuilding road bed and general grading work along Carrier's right-of-way on the Georgia Subdivision of the Atlanta Division. These five Contractor employees are working ten hours each day, five days each week, Monday through Friday. Thus far, up to and including Friday, August 31, 1990, they expended a total of 1750 man-hours in the performance of the subject maintenance work. The Carrier made no attempt to notify/confer with the General Chairman regarding its plan to use outside forces for the grading work in question.

The Carrier in this instant case is in violation of, but not restricted to Rules 1, 2, 3, 4, 5 sections 1 and 2, 6, 7 section 1, 8, 27 and 28 of the effective Agreement."

Carrier replied to the claim maintaining that the Organization's information was "inaccurate" and that the work which the contractor performed was "very sporadic" and completed by August 9, 1990. The Carrier further maintained that:

"As previously advised, there was nowhere near 1,750 manhours consumed in the performance of this work; in fact, only 66 hours could be reasonably argued as having anything whatsoever to do with Carrier's operation, as the remaining 342.5 hours took place on private property!

Furthermore, Claimants were all on duty and under pay at the time the work was performed, and would be entitled to no additional compensation in any event."

Further correspondence between the Parties did not bring about resolution to this issue. The dispute is now before the Board for adjudication.

Rule 2 of the Agreement between the Parties states, in pertinent part:

"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 or available to the Carrier ... In such instances, the General Superintendent-Chief Engineer and the General Chairman will confer and reach an understanding setting forth the conditions under which this work will be performed."

At the outset, it is not disputed that Carrier failed to "meet and confer" with the General Chairman prior to entering into an agreement with the contractor. Therefore, Carrier clearly violated that portion of Rule 2 of the Agreement.

With regard to the work which the contractor performed on the private pasture land in question, Carrier argued that it did not possess the proper equipment to perform the necessary clean-up work. The Organization did not present any evidence which would lead us to question Carrier's assertion, therefore, that portion of the 1750 hours, some 342.5 hours, will not be considered further.

However, we found the Organization's position persuasive with respect to the work which was performed along the drainage ditch, on Carrier's property. At the very least, Carrier should have conferred with the General Chairman prior to contracting out that portion of the work.

In that connection, the fact that Claimants were "fully employed" during the time that the drainage ditch repair was performed does not negate liability for the proven violation of Rule 2. Accordingly, Carrier is directed to compensate Claimants for 66 of the hours in dispute.

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 29th day of August 1996.