

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31601  
Docket No. MW-30820  
96-3-92-3-644**

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

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

**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 or otherwise permitted outside forces to perform B&B maintenance work of door repairs, interior painting, repair ceiling tiles, install signs, pressure cleaning and carpentry work to a Carrier building located at the TOFC Ramp on Sportsman Club Road, Jacksonville, Florida in May, 1991 [System File CLR-91-36/12(91-1271) SSY].**
- (2) The claim \* as presented by General Chairman Knight on May 22, 1991 to Division Engineer M. L. Dobbs shall be allowed because said claim was not disallowed by Division Engineer M. L. Dobbs in accordance with Rule 40 of the Agreement.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the Claimants listed below \*\* shall each be compensated as follows:**

**\* The initial letter of claim will be reproduced within our initial submission.**

<b>**</b>	<b><u>NAME</u></b>	<b><u>DUE CLAIMANTS</u></b>
	Carpenter J. R. Graham	\$864.66
	Carpenter C. L. Roberts	\$864.66
	Carpenter H. G. Davis	\$864.66
	Carpenter M. W. Rauh	\$864.66
	Carpenter L. A. Britt	\$864.66
	Carpenter D. Stephens	\$864.66"

**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.

Claimants are Carpenters in Carrier's Bridge and Building (B&B) Department. During the first two weeks of May 1991, Carrier contracted with Thomas May Construction Company to perform building maintenance at the TOFC Ramp Building located at Jacksonville, Florida. Thomas May employees expended approximately 400 hours completing the project.

On May 22, 1991, the General Chairman submitted a claim, alleging that Carrier had violated Rules 1, 2, 3, 4 and 5 of the Agreement when it contracted out work which had "historically" been performed by Claimants. The General Chairman noted that Carrier entered into the agreement with the outside contractor without conferring with him, as required by Rule 2. Finally, the General Chairman asserted that Claimants were "fully qualified" and readily available to perform the work had Carrier afforded them the opportunity to do so.

In on-property handling, Carrier failed to disallow or otherwise respond to the claim until September 3, 1991, well outside the 60 day time limit provided for in Rule 40-Time Limit on Claims and Grievances. Carrier did not dispute that it had exceeded the proscribed time limits. Rather, it offered to settle the claim with a compromise offer for the dollar amount it paid to Thomas May Construction.

The Organization rejected Carrier's offer maintaining that Carrier's compromise offer did not "come close" to the compensation Claimants would have received for an equal number of hours had they been assigned to the work in question.

In this instance, even assuming arguendo, that the work at issue was not exclusively reserved to Maintenance of Way forces, Rule 2 required Carrier to confer with the General Chairman prior to contracting the work to Thomas May Construction. The failure to deny the claim within the time limits prescribed by Rule 40 is fatal to Carrier's position and Rule 40 sets the liquidated damages for violations of its provisions i.e., "the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

### **AWARD**

**Claim sustained.**

### **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.**