

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 32370  
Docket No. MW-31251  
97-3-93-3-213

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees  
(CSX Transportation, Inc. (former Chesapeake &  
( Ohio Railway Company)

**STATEMENT OF CLAIM:**

**"Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier assigned outside forces (Rail Tech Construction) to perform Maintenance of Way work (remove Westvaco Lead) near Mile Posts 290.8 and 291.2 on the Allegheny Subdivision near Covington, Virginia on February 11 and 12, 1992 [System File C-TC-5308/12(92-598) COS].**
- (2) The Agreement was further violated when the Carrier assigned outside forces (Rail Tech Construction) to perform Maintenance of Way work (dismantle sidings) near Mile Posts 290.2 and 290.7 near Covington, Virginia on February 17, 1992, instead of assigning Covington Section Force 5GC1 [System File C-TC-5315/12(92-597)].**
- (3) The Agreement was further violated when the Carrier failed to give the General Chairman advance written notice of its intent to contract out said work or discuss the matter in conference in good faith prior to contracting out said work as required by the October 24, 1957 Letter of Agreement (Appendix 'B').**
- (4) As a consequence of the violation referred to in Parts (1) and/or (3) above, furloughed employees G. C. Simpson, R. W. Bocook and R. A. Bocook shall each receive fourteen (14) hours' pay, twelve (12)**

hours at their respective straight time rates and two (2) hours at their respective time and one-half rates.

- (5) As a consequence of the violation referred to in Parts (2) and/or (3) above, Messrs. L. Entsminger, J. Jackson and P. Hanna shall each receive ten (10) hours' pay at their respective time and one-half rates."

**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 were given due notice of hearing thereon.

Rule 83 and Appendix B requires that before Carrier contracts out Maintenance of Way work it must discuss the matter with the Organization's General Chairman. In the matter under review here two elements of Maintenance of Way work were performed by Rail Tech Construction and the matter was never discussed with the Organization's General Chairman. This is a violation of Rule 83 and Appendix B. Accordingly, the claim has merit.

Carrier argued before this Board that it did not maintain control of the trackage in question at the time Rail Tech Construction was utilized to remove the Westvaco Lead and dismantle the sidings between MP 290.2 and 290.7. In the on-the-property handling the Organization repeatedly asked that Carrier support this assertion with some type of evidence. Carrier failed to do so then, and under well established authority, it is foreclosed from offering such evidence for the first time before this Board.

The claims will be sustained as presented.

**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 30th day of December 1997.**