

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35836
Docket No. MW-33362
01-3-96-3-867

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned outside forces to perform the work of raising and tamping ties at Mile Post Q245.2, Bedford, Indiana, on January 4, 1995 [System File 22495.TM/12(95-0628) MNN].
2. 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 as required by Rule 60.
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Messrs. D. E. Baxter, S. A. Truax and A. J. Mathis shall each be compensated eight (8) hours' pay at their respective 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.

This record is confusing.

The initial claim dated February 24, 1995 asserted that a contractor came onto the Monon property, and "... raised and tamped ties located at Mile Post Q244.2 Bedford, Indiana, near 3rd Street, which is close to the GM Plant." The date specified in the claim for the alleged violation was January 4, 1995.

The Carrier responded on April 21, 1995 that it did not have track at Mile Post Q244.2 because all track at that location had been abandoned and removed. The Carrier further responded that if the work was performed at the GM Bedford Plant at Mile Post Q245.2, the Carrier's records showed that Claimants D. E. Baxter and A. J. Mathis installed a connection at that location on December 12, 1994. Further, according to the Carrier, "CSX Transportation has no knowledge of any surfacing work performed, nor have they authorized any such work."

On June 16, 1995, the Organization stated that the original mile post was incorrectly cited as the location of the disputed work and that the correct mile post was Mile Post Q245.2. With respect to the work performed on December 12, 1994 by Claimants Baxter and Mathis, the Organization stated that on that date Claimants Baxter and Mathis went to make a connection but did not do so "... because the people that were to help make this connection had the wrong angle bars so the work was not done that day." However, the Organization stated that it was not making a claim for that work, but "[w]e are claiming the 8 hours that the contractor worked raising ties and surfacing and tamping ties."

By letter dated August 14, 1995, the Carrier responded that "... the Carrier is not aware of any surfacing work performed at this location on the date cited by you and you have failed to show otherwise."

By letter dated January 19, 1996, the Carrier attached a March 12, 1995 statement from Roadmaster J. G. Reynolds that "[t]o my knowledge no contractor has

been authorized nor have I received a bill from a contractor for working on any CSX track at this location or anywhere in the area.”

By letter dated February 24, 1996, the Organization submitted a statement from Signal Maintainer J. E. Flick that “[o]n 1-4-95 I was at Bedford at MP245.2 and saw a contractor working on CSX track that goes into the foundry at Bedford.” The Organization emphasized that the date in question was January 4, 1995.

At best, in terms of evidence, the record discloses the assertion in accord with Flick’s statement that “[o]n 1-4-95 I was at Bedford at MP245.2 and saw a contractor working on CSX track that goes into the foundry at Bedford.” Given the Carrier’s denials that a contractor performed work at or near that location, under the circumstances, the Organization’s factual demonstration is insufficient for the Board to find that a contractor performed scope covered work in violation of the Agreement.

In light of that finding, the Carrier’s argument that the dispute was not properly progressed to the Board is moot.

Based on the above, the claim is denied.

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 18th day of December, 2001.