

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35839
Docket No. MW-33378
01-3-96-3-892**

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 Clinchfield
(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 (Jensen Drilling Co.) to weld plates to piling (that had been driven by B&B forces) and to erect a wall of timber to the existing piling for a crib wall to hold ballast at Mile Post ZF 3.9 on the Fremont Branch on July 5 through 21, 1995 [Carrier’s File 12(95-1167) CLR].
- (2) The Agreement was further violated when the Carrier failed to grant a requested conference or to make a good-faith effort to reduce the incidence of contacting out scope covered work and increase the use of its Maintenance of Way forces are required by Rule 48 and the December 11, 1981 Letter of Understanding.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Messrs. D. V. Brewer, R. K. Brewer, D. H. Fender, J. Byrd and G. K. Willis shall each be allowed ‘ . . . one hundred and forty six hours at the straight time rate of pay with overtime rate for Friday and Saturday at their respective rate of pay for this claim.’”

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.

By letter dated May 3, 1995, the Carrier advised the Organization that it intended to contract the installation of wall anchors, timber wall lagging, site grading and culvert installation at approximate Mile Post ZF-3.9, on the Fremont Branch Subdivision, on the Blue Ridge Division of the former Clinchfield Railroad.

In response, the Organization produced a letter dated May 15, 1995 disagreeing with the Carrier's action, and further stating that "[w]e . . . wish to discuss this matter with you further."

No conference was held. The work was performed by the contractor in July 1995.

According to the Organization's letter of November 25, 1995, the Organization "... acknowledged receiving notice and asked for a conference to discuss the letter of intent to contract out work but was not granted one."

The Carrier took the position that no conference was requested. According to the Carrier's January 25, 1996 letter:

"... [T]his Carrier has no record of the Organization requesting a conference of the Carrier's contracting notice.... Therefore, if such exists, we are somewhat perplexed that same was not provided as a part of the appeal of this matter."

Nothing further was presented by the Organization to refute the Carrier's assertion that, although the Organization contended that it requested a conference, the Organization never submitted a request to the Carrier for a conference.

Although the Organization produced a letter dated May 15, 1995 disagreeing with the Carrier's decision to contract out the work and stating that "[w]e . . . wish to discuss this matter with you further," when challenged by the Carrier in its January 25, 1996 letter that the Carrier had no record of such a request for a conference, the Organization did not respond. Given the Carrier's position that it did not receive a request for a conference, without more from the Organization showing that the May 15, 1995 letter requesting a conference was actually sent, we cannot assume that such was done. The Organization's failure to even respond to the Carrier's position that it did not receive a request for a conference requires that we find that no such request was actually sent.

Without the record establishing that the Organization, in fact, requested a conference, the Organization cannot now challenge the Carrier's contracting the work. See Third Division Award 31016:

"Under the circumstances where the Organization has failed to take advantage of its Agreement right to have a meeting and engage in good faith discussions following the Carrier's indicated willingness to hold a conference, this Board has held that the Organization is precluded from challenging the resulting contracting. Third Division Awards 24888 and 28337. . . ."

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.