

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23498  
Docket Number MW-23382

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees  
{ Seaboard Coast Line 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 Assistant Vice President, Engineering and Maintenance of Way and the General Chairman as required by Rule 2, it assigned work of the Maintenance of Way and Structures Department, in the vicinity of Boston and Thomasville, Georgia, to outside forces on September 27, October 9, 10, 11, 12 and 17, 1978 (System File 37-SCL-77-63/12-2(79-6) J1).

(2) Because of the violation referred to above, each member assigned to Section Force #6018 at Thomasville, Georgia, who holds seniority in the Track Subdepartment, Group A, Atlanta-Waycross Division Seniority District (as listed below) be paid an equal proportionate share at the applicable Class III Machine Operator's rate of pay for forty-eight (48) hours and an equal proportionate share at the applicable Trackman's rate of pay for forty-eight (48) hours, for a total of ninety-six (96) man hours consumed by the Contractor in performing the work referred to in Part (1) hereof.

Claimants

William Bruce	Id. #135387	Foreman
Johnnie Lovejoy	Id. #138484	Trackman
F. McCrary, Sr.	Id. #164337	Trackman
L. W. Harris	Id. #159667	Trackman"

OPINION OF BOARD: Carrier leased a rubber-tired back hoe front end loader on certain dates because all of its equipment of this type was involved in other projects. The leasing Company insisted that its employe operate the equipment. In addition a laborer, in the employ of the leasing company, assisted the operator in performing paving work.

In the Rebuttal Statement, Carrier concedes that this dispute is identical to the claim decided in Award 22917 except for the claim for pay for the laborer, who according to Carrier, performed no track work.

We feel that Award 22917 clearly controls this case and dictates a sustaining Award. We do note, however - as did the author of Award 22917 - that a higher compensation had been made to a Carrier employe as an Operator and thus, no further payment is required in that regard. No such payments were made, however, concerning the laborer. We are not able to accept the distinctions and contentions advanced by Carrier concerning his conceded use, and thus we do direct payment of the claim as it involves the laborer.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulson  
Executive Secretary

Dated at Chicago, Illinois, this 8th day of January 1982.

