

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc.
(former Atlanta and West Point 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 General Superintendent-Chief Engineer and the General Chairman as required by Rule 2, it assigned the hauling and placement of crush and run materials utilizing dump trucks, for construction of a side track subgrade at LaGrange, Georgia, between Mile Post 68.5 and Mile Post 73.7 to Lewis General Contractors of Dublin, Georgia beginning on November 2, 1987 and continuing thereafter [System File 37-AWP-GA-87-64/12(88-284) AWP].

(2) Because of the aforesaid violation, each of the Claimants, C. Lovelace, J. L. Hill, F. Germony, W. J. Walker, J. J. Hull, D. Trammell, J. M. Martin, W. Cummings, D. D. Ingram, L. J. Hunt, H. Hudson, R. Walker, W. Jennings, J. Lumpkin and E. W. Taylor shall be allowed pay at their respective rates, for an equal proportionate share of the total number of man-hours expended by employees of the outside contractor performing the work referred to in Part (1) hereof."

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 employees 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.

In connection with track rehabilitation work near LaGrange, Georgia, the Carrier arranged for the purchase and delivery of "crush and run" stone to the site by an outside firm. Actual rehabilitation work was performed by employees represented by the Organization.

The Organization argues that the Carrier violated Rule 2, Contracting, with special reference to its failure to "confer" with the General Chairman in advance.

The Board finds that delivery of material purchased from an outside source does not constitute any violation of Rule 2. Other than delivery as required by the Carrier, all work was performed by Carrier's employees.

Consonant with this conclusion are recent Third Division Awards 27184, 20926, and 20783.


As part of its defense, the Carrier argues as to the failure of the Organization to demonstrate "exclusive" right to the work. The Board notes that the exclusivity concept is not appropriate to this situation involving alleged use of outside contracting. This view is supported by many previous Awards.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deven - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1991.