

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc.
(Formerly The Toledo Terminal 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 blacktop the Union Street highway crossing at Walbridge, Ohio on October 14, 15 and 16, 1987 (System File C-TC-4018/12(87-1332).

(2) The Agreement was further violated when the Carrier contracted the above-mentioned work without notifying the General Chairman in accordance with Article IV of the May 17, 1968 National Agreement.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, furloughed Foreman R. Humes and furloughed Laborers A. Adams, L. Gloria, A. Kertez, M. Payden, J. Bauman, J. Grosbeck, B. Hindman, W. Judy and D. Sulier shall each be allowed twenty-four (24) hours of pay at their respective pro rata rates. In addition, each Claimant shall be allowed three (3) additional days credited towards their vacation qualifying time."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

This Claim results from the Carrier's use of a contractor on October 14, 15, and 16, 1987, to blacktop the Union Street crossing at Walbridge, Ohio. The Organization charges the Carrier did not notify it of its intentions to contract out the work. The Carrier argues that such notice is only necessary where work comes within the scope of the Agreement. The Carrier acknowledges that Maintenance of Way forces have occasionally performed the work in question, but contends such occasional performance does not establish exclusivity.

This Board has consistently rejected the proposition that a Carrier must notify the General Chairman only when the work in question is exclusively reserved to the Organization. The language of Rule 41 and like provisions was written to provide the General Chairman an opportunity to discuss the circumstances of the contemplated assignment of work to outside contractors. In this matter, the Carrier has cited a number of Awards dealing with the jurisdictional right to a type of work. The exclusivity doctrine, however, applies when the issue involves a challenge to the Carrier's right to assign work to different crafts and/or classes of employees.

Rule 41 cannot be read so as to infer that work within the scope means work reserved exclusively to the Organization by history, custom, or tradition. This record indisputably establishes the Organization has performed the work in question. Additionally, the Carrier ignores the obvious implication of Rule 35 1/2, therefore, this Board finds the Carrier violated the Agreement when it failed to notify the General Chairman of its plan to contract out the blacktopping performed on October 14, 15, and 16, 1987.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Devitt - Executive Secretary

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