

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(CSX Transportation, Inc.  
(Formerly The Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when, without notifying or conferring with the General Chairman, as required by the October 24, 1957 Letter of Agreement (Appendix 'B'), it assigned outside forces to perform track work and clean the right-of-way in the tunnel between Mile Posts 15 and 16 at Sproul, West Virginia beginning November 5, 1987 [System File C-TC-4230/-12 (88-40)].

(2) As a consequence of the aforesaid violation, furloughed Trackmen S. Gibson, J. E. Jobe and J. L. Holbrook shall each be allowed three hundred eight-four (384) hours of pay at their respective rates and they shall each be credited with sixteen (16) days of 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.

There is no dispute that as a result of a major tunnel fire on November 5, 1987, Donahue Brothers was called in to remove debris. The Organization alleged that the contractor not only removed debris and cleaned the area, but also renewed track, laid thirty-one panels and bolted them. The Organization argues that the Carrier had allowed this work to be done by the outside contractor, even though equipment was available and the work belonged to the employees by Agreement.

The Carrier denies any Agreement violation. It specifically denied each and every allegation. The Carrier argues that an emergency existed and the contractor was called because it had the large equipment necessary which the Carrier does not own. It denies that the contractor performed track work or set panels.

Claim is made for the violation of eleven Rules and Appendix B. At no time did the Organization ever relate language of the Agreement to specific alleged actions violated by the Carrier. Although the Board notes the instant Claim alleges Carrier failure to notify and confer, we fail to find any discussion of this on the property. Even further, from December 1987, until May 1988, no evidence was submitted on property to substantiate the Claim, even though the Carrier had stipulated that the alleged existence of evidence had never been submitted. Six months after the conference and a year after the alleged violation, the Organization provided one letter by a Signaller which in substance states that the contractor used a large front end loader. The Signaller stated that he was "sure CSX owns one or two of them." Carrier had earlier denied it had the appropriate equipment. The letter further states that he observed the contractor bolting angle bars and doing unspecified track work.

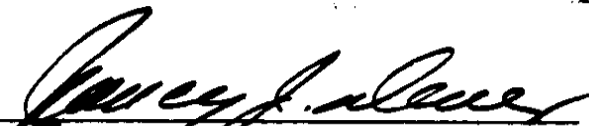
Our review finds insufficient evidence of probative value to substantiate a Rule violation. For us to find that the Carrier violated one of the above Rules or Appendix B would have required on-property substantiation of any of the numerous allegations. After the Carrier asserted an "emergency" and "absolute necessity" to have the contractor remove debris, the Organization would have had to challenge the emergency nature with facts. The Organization never proved with substantial evidence that specific track work was performed on particular days in violation of one or more of the Rules. The Organization never brought evidence that the Carrier owned the large equipment Carrier denied owning. In the whole of this case, we fail to find the evidence necessary to sustain the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1991.