

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (former Seaboard System Railroad)

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 Chief Engineering Officer and the General Chairman as required by Rule 2, it assigned track dismantling work in Savannah Yard, Savannah, Georgia on the Savannah Division to outside forces beginning on February 9, 1987 and continuing thereafter [System File 5S16-87-38/12-2(87-463) Q].

(2) As a consequence of Part (1) above, each of the employees assigned to Force 5S16 shall be allowed pay at their respective pro rata rates for an equal proportionate share of the total number of hours consumed by the outside contractor, beginning February 9, 1987 and continuing until the violation ceases."

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 waived right of appearance at hearing thereon.

On April 10, 1987, the Organization filed the instant claim protesting the use of a contractor to dismantle certain track in the Savannah Yard. Significantly, he claimed that the track was not being dismantled for purposes of abandonment, but for the purpose of reconstruction.

The Division Manager in his April 15, 1987 reply asserted the track in question was disconnected by Carrier forces before being removed by the contractor, who, he also asserted, had purchased the track.

The Board notes that by letter dated February 11, 1988, the Organization requested a copy of the contract conveying ownership of the track to the contractor. Additional time was granted to the Carrier, upon its request, to provide the requested documentation. There was ample time to do this, and the alleged contract was not produced. The Board also finds that the Carrier never successfully established that the track was "abandoned" in the sense which would in any way remove it from the scope of the Agreement.

In view of the foregoing, the Board must conclude that the Carrier failed to support its affirmative defense. Given the state of the record, we must conclude that the Carrier retained ownership and control over the track in question. As such, the work involved, as being historically performed by the bargaining unit, could not be contracted except as set forth in Rule 2. The contracting out was not justified under the criteria set forth therein. We also note the Carrier never made its full employment argument on the property. Accordingly, the claim must be sustained as presented.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November 1991.