

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29973
Docket No. MW-30122
93-3-91-3-557

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. (former Seaboard
(Coast Line)

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

- (1) The Carrier violated the Agreement when, without conferring and reaching an understanding with the General Chairman as required by Rule 2, it assigned an outside concern (Davis Construction Company) to perform concrete and asphalt work on a walkway at Uceta Yard in Tampa, Florida on September 12, 13, 14, 17, 18, 19 and 20, 1990 [System File CARP-90-68/12(90-850) SSY].
- (2) As a consequence of the aforesaid violation, Carpenters C. Roberts, A. Oladell, B. J. Moore, H. G. Davis and B. L. Sullivan shall each be allowed pay for an equal proportionate share of the total number of man-hours (336 hours at the straight time rate) expended by the outside concern."

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 employe 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 dispute arose when the Carrier contracted with Davis Construction Company to remove an asphalt driveway at the Carrier's Uceta Yard, Tampa, Florida, and replace it with concrete. On September 25, 1990, the Organization filed a claim asserting this work had historically been performed by M of W employees and that the Carrier's actions violated the provisions of Rule 2. The Board notes the on-property record establishes that Rule 2 was the only Rule cited by the Organization in advancing this claim.

On January 8, 1991, the Carrier denied the claim asserting the work involved does not accrue exclusively to M of W employees and is not subject to Rule 2 of the Agreement. The assertion was not refuted on the property.

Similar disputes between the parties concerning the assignment of such work have been before this Board and denied because the Organization failed to show that the work in question is reserved to its members by historical custom and practice. See Third Division Awards 26997, 26225, 25870, and 25090. Herein, the Organization failed to meet its burden, and we shall deny the claim accordingly.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of December 1993.

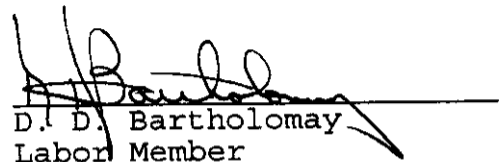
LABOR MEMBER'S DISSENT
TO
AWARD 29973, DOCKET MW-30122
(Referee McAllister)

This award is palpably erroneous and requires a dissent.

Without going into the history of contracting out of work disputes involving concrete work between this Carrier and the Maintenance of Way Employees and the precedent established, to make a determination on a notice issue (conferring and reaching an understanding with the General Chairman) by ruling that the work does not accrue exclusively to Maintenance of Way employees is contrary to the precedent of the Third Division. The Majority demonstrated its urgency to simply deny a claim by relying on four awards which dealt with "class/craft" disputes where the Board has used "exclusively" as a reason to deny claims. It is a travesty that the Majority and, in particular, this Arbitrator would not take the time to review the awards used as precedent to deny the claim.

Obviously, the award is illogical and not based on the precedent cited. Consequently, it is palpably erroneous and of no precedential value. Therefore, I dissent.

Respectfully submitted,


D. D. Bartholomay
Labor Member