

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30033
Docket No. MW-29469
94-3-90-3-395

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 Employes
(
(CSX Transportation, Inc. (former 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 (Donahue Brothers) to unload bridge spans from flat cars on the south side of the Barboursville Shops on June 6, 1989 [System File C-TC-4914/12(89-741) COS].
- (2) As a consequence of the aforesaid violation, Laborers L. Dial, L. Arthur, C. Cash, J. Comeau, Foremen J. Markin and C. McComas shall each be allowed nine and one-half (9.5) hours of pay at their respective straight time rates."

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.

On June 6, 1989, the Carrier employed a local contractor to provide a crane and crew for the purpose of unloading several carloads of bridge spans near Barboursville Plant. The Organization states that the Carrier failed to give notice of this contracting and argues that the work could have and should have been performed by maintenance of way forces.

While the Organization contends that maintenance of way forces have performed this work previously, the Carrier claims that the same contractor has been utilized in the past under similar circumstances. The Carrier asserts that it did not have a crane available which could suitably accomplish this task, while the Organization argues to the contrary.

Of relevance here is Rule 83, which provides a variety of conditions under which the Carrier's right to contract work is recognized, and Appendix B, which reads in part as follows:

"...it has been the policy of this company to perform all maintenance of way work covered by the Maintenance of Way Agreements with maintenance of way forces, except where special equipment was needed, special skills were required, patented processes were used, or when we did not have sufficient qualified forces to perform the work. In each instance where it has been necessary to deviate from this practice in contracting such work, the Railway Company has discussed the matter with you as General Chairman before letting any such work to contract.

We expect to continue this practice in the future...."

The record does not indicate that this instance is a "deviation" from a "practice", requiring advance notice to the General Chairman. Further, there is no way for the Board to resolve whether or not Carrier equipment was both available and adequate for this assignment. Under all the circumstances, there is insufficient evidence to support the Claim.

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 February 1994.