

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30070  
Docket No. MW-29672  
94-3-91-3-12

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(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 a conference having been held as required by the October 24, 1957 Letter of Agreement (Appendix 'F'), it assigned outside forces (Pat's Excavating) to clean out trackside ditches and install 1,050 feet of 24" concrete pipe at Stevensville, Michigan beginning October 30 and continuing through November 10, 1989 [System File C-TC-5062/12(90-186) CON].
- (2) As a consequence of the aforesaid violation, B&B employes W. Larr, M. Picard, J. Woods and K. Hopkins shall each be allowed thirty (30) hours of pay at their respective straight time rates and Track Department employes R. Siemon, J. Weidenman, J. McGill and J. Brasfield shall each be allowed ten (10) 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.

The facts and circumstances of the instant dispute are nearly identical to those in Third Division Award 29671. In this case, however, the Organization notified Carrier with reasonable promptness that it desired a conference regarding Carrier's intent to contract out work on trackside ditches. Carrier granted the conference on November 2, 1989, three days after the contracted work had begun. This action was in blatant disregard of the unambiguous meaning of the applicable provisions of Appendix "F" of the Agreement, to wit:

"...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 and if you agree that this disposes of your request, please so indicate your acceptance in the space provided. (Emphasis added)."

For reasons set forth at greater length in Third Division Award 29671 and elsewhere, the first part of the claim is sustained, and the second part is denied.

A W A R D

Claim sustained in accordance with the Findings.

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.