

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30080
Docket No. MW-30064
94-3-91-3-477

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(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 conferring and reaching an understanding with the General Chairman as required by Rule 2, it assigned outside forces (Midway Railroad Construction Company, Inc., of Mableton, Georgia) to perform maintenance work of dismantling the Brecon Lead at Talladega, Alabama on the Lineville Subdivision of the Atlanta Division from February 23 through and including April 11, 1990 [System File 90-41/12(90-646) SSY].
- (2) As a consequence of the aforesaid violation, Maintenance of Way Track Subdepartment Group A Foreman H. G. Buckner, Trackmen W. N. Faulkner, J. A. Horne, D. Q. Spann, G. E. Taylor, J. G. Bussey and C. D. Sargent shall each be allowed:

'...an equal proportionate share of the two thousand four hundred thirty (2430) hours of work expended by the contractor's employees on Mondays through Thursdays during the above noted dates, also an equal proportionate share at their appropriate time and one-half rate for the total one thousand eight hundred ninety (1890) overtime hours of work expended by the Contractor's employees on February 23, 24, 25, March 2, 3, 4, 9, 10, 11, 16, 17, 18, 23, 24, 25, 30, 31, April 1, 6, 7 and 8, 1990, the Claimants assigned rest days i.e. Fridays, Saturdays and Sundays.'"

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 dispute before us arose out of Carrier's sale of 2.55 miles of retired side track to the Midway Railroad Construction Company, and the subsequent actions by the contractor to recover the purchased property. The track is known as the Brecon Lead and is located in Talladega, Alabama. The entire project was handled out of the Chief Engineer's Office in Jacksonville, Florida, which put the project out for bid and handled the contract.

The retired track was sold to Midway Railroad Construction Company "as is and in place." From February 23, through April 11, 1990, nine Midway employees dismantled the track. With the exception of a small amount of metal material which the Carrier retained for maintenance purposes, Midway removed all of the remaining materials.

Claimant H. G. Buckner is a Foreman on the Atlanta-Waycross Seniority District. Claimants W. Faulkner, J. Horne, D. Spann, G. Taylor, J. Bussey, C. Sargent hold seniority as Trackmen on same District. On April 19, 1990, the Organization filed a claim on behalf of the aforementioned employees stating that the Claimants were "assigned to Force 6A16, headquartered at Talladega, Alabama, and should have been called to dismantle the track in question."

The Organization cited the Carrier for violating Rules 1, 2, 3, 4, 5 section 1 and 2, 6, 7 and section 1, 8, and 13 of the effective Agreement. As a consequence of the above cited "violations," the Organization argued that the Claimants should be compensated at "their appropriate pro-rata rate an equal proportionate share of the two thousand four hundred thirty (2430) hours of work expended by the Contractor's employees."

Carrier denied the claim stating that the section of track had been "retired and was no longer a part of the Carrier's operating

facilities." Further, Carrier maintained that Midway was "simply retrieving their property."

Both Parties presented prior Awards to support their respective positions. The Board carefully reviewed both the evidence presented and those Awards. We conclude that the Carrier did not violate the Agreement. The retired track was sold on an "as is, where is" basis, and the Carrier simply allowed the contractor who purchased the track to retrieve its own property. See Third Division Awards 29959, 29016, 28615, 28489, 28488, 20851 and 10826. For the foregoing reasons, this claim is denied.

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 15th day of March 1994.