

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30608
Docket No. MW-30284
94-3-92-3-12

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 Employes
(
(CSX Transportation, Inc. (former Atlantic
(Coastline Railroad Company)

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 in accordance with Rule 2, it assigned an outside concern (E. & M. Services) to perform the maintenance work of reconstructing road crossings on the Portsmouth Subdivision of the Florence Division on May 4 and 5, 1990. [System File 90-68/12 (90-966) SSY].
- (2) As a consequence of the aforesaid violation, Foreman M. C. Thomason, Assistant Foreman J. T. McGee, Machine Operator L. D. Davis and Trackmen T. L. Boykins, Jr., W. A. Edwards and L. A. Artis shall each be allowed pay in the amount of an equal proportionate share at their appropriate Track Subdepartment, Group A, pro-rata rate for the total of 40 hours straight-time work performed by the contractor's employees and also, an equal proportionate share at their respective time and one-half rate for the total of sixty (60) hours overtime worked by the contractor's employees after the Claimants' assigned hours on Friday, May 4, 1990 and their rest day, Saturday, May 5, 1990."

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.

By letter of March 26, 1990, Carrier notified the Organization as follows:

"This will serve as notice of Carrier's intent to contract for the repaving of road crossings on the Raleigh/Rocky Mount Seniority District, Florence Division....

Contract of the foregoing is necessary due to the unavailability of skilled forces and equipment with which the work may be done. Furthermore, as you are well aware, it is and has been the Carrier's position that such work does not accrue to MofW forces and this notice is in keeping with our commitment to you of advice when outside parties are on or near company property...."

The Parties conferred on the matter on April 3, 1990, but failed to reach accord. On May 4 and 5, 1990, Carrier used its forces to repair a road crossing near Branchville, Virginia, on the Florence Division. Upon completion of the track work, an outside contractor paved the prepared crossing and the approaches leading to the track structure.

The Organization filed a claim on behalf of the Claimants named above on July 3, 1990. Among the Rules cited in that claim was Rule 2 - Contracting. Carrier denied the claim, pointing out that it had, in fact, served timely notice on the Organization in compliance with the specific provisions of Rule 2. In addition, the Organization disputed Carrier's assertions that it lacked sufficient forces and equipment to perform the work at issue. The claim was subsequently progressed up to and including the highest Carrier officer authorized to handle such matters. Following

conference between the Parties on January 7, 1991, the matter remained unresolved.

At the outset, it is apparent from unrefuted evidence on the record that Carrier did comply with the notification provision of Rule 2 of the Agreement. With respect to the work at issue, this is not a case of first impression. In a similar case before this Board involving the same Parties (Third Division Award 29824) the Board held in pertinent part as follows:

"The second part of the Organization's claim--that the paving work at issue has been customarily and historically performed by Maintenance-of-Way employees throughout the railroad industry and is, therefore, scope covered work--has already been addressed in several prior Awards. As the Board held in Third Division Award 29432, there is a mixed practice on this property with respect to the performance of paving work. No evidence on this record suggests that the practice is no longer "mixed." Accordingly, the Board does not find that the work at issue is reserved to Maintenance-of-Way employees."

There is no evidence on the record before the Board in the instant case to contravene the Board's holding in Award 29824. Accordingly, the instant claim is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 2nd day of December 1994.