

Form **RECEIVED** NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

JAN - 5 1995

Award No. 30637
Docket No. MW-29348
94-3-90-3-258

G. L. HART

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

(CSX Transportation, Inc. (former
(Seaboard Coastline Railroad Company)
PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM:

- "(1) The Agreement was violated when the Carrier permitted Tampa International Forest Products to pick up from its (Carrier's) property, used cross ties which they (TIFP) had purchased (Carrier's File 12 (89-544), Organization's File 37-SCL-89-17)).
- (2) As a consequence of the aforesaid violation, Foreman W. J. Hornsby, Assistant Foreman R. L. Miller, Crankhand D. E. Steedley, Trackmen W. A. Johnson, K. S. Austin, A. Long. J. M. Eunice and C. White, Jr. and Class III Machine Operator J. D. Ray, be paid an equal proportionate share of an alleged 1536 hours consumed by TIFP in retrieving their property."

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 therein.

Parties to said dispute waived right of appearance at hearing thereon.

The dispute involves the removal of used ties from the Carrier's right-of-way between Mileposts 592 and 640. The ties were removed by an outside concern. The Organization contends that this is a violation of Rule 2 (contracting).

The basic issues presented by this case have already been resolved. The ties were sold on an "as is, where is" basis. Accordingly, the removal by the outside concern did not violate the Agreement since the ties were no longer owned by the Carrier. In Third Division Award 30224 involving the same Parties and similar facts, the Board stated:

"While the Carrier offers other defenses to its action, its principal explanation is that it had an agreement with Texas International Forest Products to purchase used ties from the Carrier, with the condition that the purchaser would retrieve and remove the ties from the Carrier's property at its own expense.

Assuming that this arrangement is factually supported, this becomes a case of the purchase of material in an 'as is, where is' condition. The conclusion that this is not contracting of work as defined in the Agreement has been well established in many Awards. Typical of such are Third Division Awards 29489 and 24280. Award 24280 sustained the claim as to portions of the work involving 'dismantling and retaining Carrier property,' but concluded:

'[T]he portion of the work involved in the sale and removal of Carrier property [ties and rails] was not improper and required no Article IV notice.'

It is noted that in the instant case the Carrier did allow the Organization to inspect the contract with the outside concern in order to verify the terms and conditions of the sale.

In view of the foregoing, the claim is denied.

AWARD

Claim denied.

Form 1
Page 3

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O R D E R

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 28th day of December 1994.