

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30910.
Docket No. MW-30214
95-3-91-3-663

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 Seaboard
(System Railroad)

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 between the Chief Engineering Officer and the General Chairman, as required by Rule 2, it assigned outside forces (Asplundh Tree Service) to perform right of way maintenance work (cutting brush and overgrowth) on August 7, 8, 9, 10, 13, 14, 15, 16, 20 and 21, 1990, between LaGrange, Georgia (Mile Post ANJ 819.0) and Pyne, Georgia (Mile Post ANJ 821.0) on the Lineville Subdivision of the Atlanta Division [System File 90-110/12 (90-1074)SSY].

(2) As a consequence of the aforesaid violation, Track Foreman R. Dyal, Apprentice Foreman J. Goss, Crankhand J. Harris and Trackmen W. McLain and I. Carson shall each be allowed pay at their respective straight time and overtime rates for an equal proportionate share of the three hundred twenty (320) straight time man-hours and eighty (80) overtime man-hours expended by the outside forces performing the work outlined in Part (1) above."

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.

As described by the Organization, the Carrier engaged an outside concern from August 7 to 21, 1990 to cut brush and overgrowth surrounding two miles of track between LaGrange and Pyne, Georgia. The Carrier describes the work as removing "hazardous working conditions caused by trees and other vegetation growing too close to the railroad track" and thus requiring a "high priority" for removal of the overgrowth.

Rule 2 provides in pertinent part as follows:

"This Agreement requires that all maintenance work in the Maintenance of Way and Structures Department is to be performed by employees subject to this Agreement except that it is recognized that, in specific instances, certain work that is to be performed requires special skills not possessed by the employees and the use of special equipment not owned by or available to the Carrier."

The Carrier and the Organization do not agree as to whether the Carrier provided timely and adequate notification as required by Rule 2. A meeting was held on July 30, 1990 to discuss a different contracting matter. When the Carrier sought to raise the track overgrowth matter at that meeting, the Organization resisted discussing what it considered a previously unscheduled topic. Another meeting was set for August 9, at which the matter was discussed. By this time, however, work by the outside firm had been in progress for two days.

While some fault may be found on both sides, the Board concludes that the Carrier failed to provide the means to "confer and reach an understanding" prior to determining "the conditions under which the work will be performed" (emphasis added). The Organization demonstrated that the work is of the nature regularly performed by Maintenance of Way forces. Likewise, the Carrier has not shown that the work required special skills or special equipment. The absence of a conference prevented any advance "understanding" to distinguish this project from other similar assignments.

A sustaining Award is warranted, both as to the Carrier's proceeding with the work without discussion and because of lack of convincing evidence that the work was not of a nature which readily could be performed by Carrier forces.

As to remedy, the Carrier argues that because the Claimants were fully employed at the time, they were not "monetarily damaged" and are not entitled to a "windfall." There are circumstances in which this reasoning may be applicable. Here, however, there is no proof that the work could not have been scheduled for performance by Carrier forces. Thus a loss of work opportunity is arguably involved. In addition, there is the shared failure to meet the Rule 2 conference requirement. The Board will sustain the claim. Third Division Award 18365, involving the same parties, reached the same conclusion many years ago concerning closely similar circumstances.

AWARD

Claim sustained.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of June 1995.