

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30980
Docket No. MW-30754
95-3-92-3-553

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(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 it assigned outside forces (Shelton Railroad Construction Company) to perform Maintenance of Way work (dismantling tracks) between Mile Post AN 851.1 to Mile Post 851.8 near Troy, Alabama on the Dothan Subdivision of the Mobile Division beginning on June 11, 1990 through June 20, 1990 [System File 90-87/12(90-1033) SSY].
- (2) The Carrier also violated Rule 2, Section 1 when it failed to confer with the General Chairman and reach an understanding prior to contracting out the work in question.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Foreman D. M. Beasley, Class III Machine Operator J. D. Wilson and Trackmen S. Foster and J. O. Lampley, Sr. shall each be allowed pay for an equal proportionate share of the five hundred twelve (512) straight time hours at their respective straight time rates of pay and the two hundred eight (208) overtime hours at their respective overtime rates of pay for the work performed by the contractor's forces."

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.

Each of the Claimants holds seniority within his respective class in the Maintenance of Way General Subdepartment on the Atlanta-Waycross Seniority District, and was working as such when this dispute arose.

In February 1989, Carrier approved the retirement and removal of "Troy Siding Track" or "West Siding" located near Troy, Alabama, on the Dothan Subdivision. The siding was taken out of service shortly thereafter, and, on May 17, 1990, Carrier contracted with Sheltons Railroad Construction Company to reclaim the material on the abandoned siding as scrap. Sheltons Construction began dismantling the track on June 11, 1990 and completed the salvage work on June 20, 1990.

The Organization submitted a claim alleging that Carrier had permitted four employees of Shelton Construction to perform "maintenance work of dismantling Carrier's tracks." The Organization maintained: "Work of dismantling tracks on the Carrier's right of way and/or property is contractually reserved to its Maintenance of Way and Structures Department employees under Rules 1, 2, 3, 4 and 5 of the Agreement." Carrier denied the claim submitting that the abandonment of trackage removes such from the purview of the scope and definition of maintenance, that the siding had been "straight railed" by maintenance of way forces, and that Sheltons Construction was simply reclaiming the scrap material given to them by Carrier "as payment for cleanup and services."

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 "as is, where is" line of precedent governs the fact situation presented in this case. Carrier did not violate the Agreement. The abandoned scrap track was bartered to the subcontractor by Carrier as payment for cleanup and removal services rendered. Carrier simply allowed the contractor to use its employees to retrieve its own property. See Third Division Awards 30080, 29959, 29016, 28615, 28489, 28488, 28051 and 10826. For the foregoing reasons, this claim is denied.

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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 26th day of July 1995.