

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 32436
Docket No. MW-31130
98-3-93-3-93

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 Employes
(CSX Transportation, Inc. (former Seaboard Coast
(Line Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned outside forces (Hambright Contractors) to perform Maintenance of Way work (dismantling side track) at Haralson, Georgia on the Manchester Subdivision of the Atlanta Division beginning September 23 and continuing through October 9, 1990 [System File 90-119/12(91-270) 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 J. L. Thomason and C. R. McGouirk, Assistant Foreman S. E. Dunn, Trackmen W. R. Stevenson, W. G. Dunn and J. Bodie, Welder R. D. Mallory, Welder Helper L. Harbuck and Machine Operators C. Copeland, Jr. and A. D. Epps shall each be allowed pay at their respective straight time and time and one-half rates for an equal proportionate share of the six hundred seventy-two (672) straight time man-hours and six hundred nine (609) overtime man-hours expended by the contractor’s employes in performing the subject work.”

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 were given due notice of hearing thereon.

On September 21, 1990, Carrier sold scrap track material from an abandoned side track at Haralson, Georgia, to Hambright Contracting, Dalton, Georgia. The track material was purchased by Hambright Contracting (hereinafter referred to as "Purchaser) on an "as is, where is" basis. The Purchaser was to remove all related materials and clean up the surrounding area. The Purchaser began the dismantling/salvage work on September 23 and finished on October 9, 1990. The Purchaser paid Carrier for this material in January 1991.

The Organization submitted a claim on behalf of the above listed employees, asserting that Carrier had violated Rules 1, 2, 3, 4, 5 sections 1 and 2, 6, 7 sections 1, 8, 27 and 28 of the effective Agreement, when it allowed the Purchaser to perform "maintenance work which accrues to the Maintenance of Way and Structures Department." According to the Organization, the Claimants were "denied their contractual rights and damaged monetarily due to the loss of work opportunity."

The Division Engineer denied the claim, stating:

"In researching this claim, we checked with Mr. D. L. Spitznagel, Sr. Project Engineer, and he indicated that the track in question was severed from the main track on both ends and has been out of service for years. The company in your claim was dismantling a piece of track that was not even a part of the Railroad. The Agreement was not violated under these circumstances."

The record contains Sales Order #905248 for the sale of "Scrap and Surplus Equipment/ Material to Hambright Contracting", issued by the Carrier on September 21, 1990, reading in pertinent part as follows:

"All material is sold 'as is-where is'. Contractor to provide certified weight tickets for all material removed from CSX. Contractor is to also remove and clean up all scrap cross-ties associated with this project as directed by Project Engineer or his designated representative."

The Organization provided no evidence to effectively refute the authenticity of the foregoing document. Nor did the Organization provide any evidence which convinces the Board that the contractor did anything other than remove the "as is-where is" property which it had purchased from the Carrier. In short, the record is devoid of evidence that the Purchaser performed any work which "accrued" or "belonged" to members of the Organization. Factually, the Carrier sold a portion of track which it no longer was using. The track had been severed from the main line at each end, and the Carrier exercised its prerogative to sell track, on an as-is, where-is basis, to Hambright Contracting. Further, given the nature of this "as is-where-is" transaction, it was not incumbent upon the Carrier to meet and confer with the General Chairman regarding the dismantling and removal of the track. Based on all of the foregoing, this 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 21st day of January 1998.