

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32630
Docket No. MW-31776
98-3-94-3-45**

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 Employees
(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 four (4) employees of an outside concern (Crews Construction Company) to reconstruct road crossings on Erin Johnson Road across tracks H19 and T20 in the Rice Yards on the Thomasville Subdivision of the Tampa Division on December 14, 1990 [System File 90-140/12 (91-287) 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, Claimants R. M. Sapp, T. H. Stewart, W. J. Hornsby, R. L. Miller, D. E. Steedley, A. Long, J. M. Eunice, C. White, Jr., D. M. Dennis and J. D. Ray, shall each be compensated, at their appropriate pro-rata rates of pay, for an equal proportionate share of the thirty-two (32) man-hours expended by the outside forces in the performance of 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 December 14, 1990, the Carrier assigned Maintenance of Way forces to rehabilitate a crossing at Rice Yard. For the "finished paving work," the Carrier utilized the services of a contractor to provide and lay asphalt. The claim concerns the failure to use Carrier forces for this paving work.

Rule 2 provides that for "all maintenance work," Maintenance of Way employees shall be assigned except in "specific instances." In such instances, the Rule provides that the Chief Engineering Officer will "confer and reach an understanding setting forth the conditions under which the work will be performed."

The Carrier argues that the particular task is not encompassed in "maintenance work," but the Board finds it unnecessary to address this aspect.

Preliminary to any basis to "confer" is, of course, notice to the Organization of the Carrier's intention to contract work. When such notice is given, it can be reasonably assumed that the General Chairman must give some indication of his wish to "confer."

The claim contends that the Carrier "failed to confer." The Carrier asserts that it sent a notice of its intention in "early December 1990." No copy of such notice is included in the record provided to the Board. The Organization, however, appears to acknowledge that notice was given, stating in claim handling correspondence as follows:

"Although a notice was served, such was tantamount (if not worse than) no notice." (Emphasis added)

Third Division Award 31483 considered a claim involving virtually the same facts (reconstruction of road crossings) and the same parties. Award 31483 stated:

“In this dispute . . . a notice was given as evidenced by the Organization’s letter of March 16, 1993 to the Carrier wherein it stated:

‘. . . Although a notice was served, such was tantamount (if not worse than) no notice. . . .’

What was intended by the Organization when it wrote the aforequoted is unknown to this Board as nothing further has been said by either party regarding the notice. Without more, the Board can only find that a timely notice of intent to contract out was given the Organization.”

The Board finds this conclusion equally applicable here. Without information that the General Chairman requested a conference, there can be no finding that the Carrier failed in any responsibility to “confer and reach an understanding.”

As to the merits, many previous Awards have denied the Organization’s contention that this particular work must be assigned to Carrier forces. Third Division Award 30608 cited Third Division Award 29824, which in turn stated:

“ . . . 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.”

The Board sees no distinguishing facts in the dispute here under review to reach a contrary conclusion.

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 23rd day of June 1998.