

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 35976  
Docket No. MW-32943  
02-3-96-3-325**

**The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.**

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees  
(  
(CSX Transportation, Inc. (former Louisville and  
( Nashville Railroad Company)

**STATEMENT OF CLAIM:**

**"Claim of the System Committee of the Brotherhood that:**

- 1. The Agreement was violated when the Carrier assigned outside forces to perform Maintenance of Way work (tamping track) between Mile Posts 00Q 118.0 and 00Q 119.0 at LaFayette, Indiana on July 22, 25, 26, 27, 28, 29, August 1, 2, 3, 4, and 5, 1994 [System File 21895T/ 12 (95-0157 MNN)].**
- 2. The Carrier further violated the Agreement when it failed to give the General Chairman a proper advance written notice of its intent to contract out said work as required by Rule 60.**
- 3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Trackman R. L. Jones shall be allowed eighty-eight (88) hours' pay at the tamper operator's straight time rate and forty-two and one-half (42.5) hours' pay at the tamper operator's time and one-half rate.**

**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 July 1, 1994, the Carrier notified the Organization of its intent to contract for the rental of a Switch and Production Tamper with operator to work at the locations set forth in the claim. The stated reason for the Carrier's action was "... due to the fact that the Carrier does not have adequate equipment laid up or forces laid off, sufficient both in number and skill with which the work might be done, in the required time frame."

The Organization has not carried its burden.

First, although the claim states that no advance notice was given prior to the Carrier's action, the record shows that a notice dated July 1, 1994 was sent to the Organization by the Carrier for work which commenced July 22, 1994. The Carrier met its notice obligations.

Second, the record shows that senior cut-back Machine Operators were upgraded for the dates the Switch and Production Tamper with operator were rented.

Third, the Organization's contention that machinery was available amounts to a conclusion disputed by the Carrier leading to, at best, a conflict in the record. Because the burden is on the Organization to demonstrate the facts necessary to establish a violation of the Agreement, such record conflicts are insufficient to meet the Organization's burden.

Fourth, aside from stating the proposition as a conclusion, in this record, the Organization has not shown that the Carrier could have rented a tamper without an operator and assigned a covered employee to perform the work.

Based on the above and due to lack of record support, the 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 19th day of March, 2002.