

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36936
Docket No. MW-36186
04-3-00-3-352**

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Erosion Control Installations) to perform Maintenance of Way work (install fence and posts) around the Collinwood Yard in Cleveland, Ohio beginning July 1 and continuing through July 8, 1998 [Carrier's Files 12(99-610) and 12(99-641)].**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intent to contract out the work described in Part (1) above as required by the Scope Rule.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants K. G. Champa, F. R. Hoyt, J. D'Orazio, S. J. La Cavera and R. H. Zinni shall now each be compensated for eight (8) hours' pay at their appropriate straight time rates of pay for each date of July 1, 2, 3, 6, 7 and 8, 1998 and each Claimant shall be compensated for eight (8) hours' pay at their appropriate time and one-half rates of pay for July 4 and 5, 1998."**

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.

According to the record, on June 28, 1998, the Carrier entered into a Property Lease Agreement with CSX Intermodal, Inc. ("CSXI") wherein the Carrier agreed to lease to CSXI certain property located in Collinwood Yard. Included within the leasehold was a parcel of land upon which CSXI intended to construct an intermodal transloading facility. On September 2, 1998, the lease was amended to include additional areas within the leasehold.

The Organization asserts that on the claim dates, contractor forces erected an orange barricade fence at the "S" Track on the South Switch Lead located at the east end of the yard. According to the Organization, the contractor utilized tools common to employees of the B&B Department in order to erect the fence. The Organization argues that the Carrier violated the Scope Rule by failing to serve notice of its intent to contract out the work. In the Organization's view, notice was required because the work performed by the contractor had been historically and customarily performed by B&B Department employees, and the Claimants were entitled to the work under the Scope Rule and Rule 1.

The Carrier asserts that the work in dispute was undertaken by CSXI following the execution of the lease and was performed within the leasehold. As a result, such work did not fall within the ambit of the parties' Scope Rule. In accordance with the lease agreement, CSXI had begun its construction of the

intermodal transloading facility and the fence was a barricade erected to cordon off the construction area.

In response to a contention of the Organization that the Carrier, which was subsequently acquired by CSX Corporation, received benefit from CSXI's contracting action, the Carrier asserts that CSXI, not the Carrier, arranged for the work. Furthermore, the Organization furnished no evidence that the Carrier was advantaged by the contractor's work. CSXT and CSXI are subsidiaries of CSX Corporation. CSXI, a trucking company, is wholly separate from the Carrier and CSXT. Thus, the Carrier emphasizes that it had no contractual obligation to provide the Organization with any contracting out notice because the Carrier had not contracted for the work.

The Board reviewed the record in this case and finds that the Carrier provided sufficient evidence that the work performed by the contractor was not associated with the Carrier's operations, and thus not covered by the Scope Rule. The record contains ample evidence that the fence was located within the leasehold, and that its construction was arranged and funded by the tenant, CSXI. There is no evidence that the Carrier benefited from the contracted work, inasmuch as CSXI was an entirely separate entity. Thus, the Carrier was under no requirement to notify the Organization about the work CSXI had planned to undertake. See Arbitration Decision between United Transportation Union and CSX Transportation, Inc. (7/16/91, Fletcher) Awards 518 and 577 of Special Board of Adjustment No. 570 and Third Division Award 19706. See also Third Division Awards 29515, 29581, 29933, 30947, 32317, 32810, 35762, and 36935.

Thus, the Organization failed to prove, by substantial evidence, that the Claimants were entitled to the work in dispute. CSXI had no Agreement with the Organization. Given the facts of record, the Board must conclude that the claim should be denied.

AWARD

Claim denied.

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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 22nd day of March 2004.