

AWARD NO. 10
CASE NO. 10

PUBLIC LAW BOARD NO. 4604

PARTIES) **BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**
TO)
DISPUTE) **CSX TRANSPORTATION, INC.**

STATEMENT OF CLAIM

Claimants

- | | |
|------------------|-------------------------------|
| 1. J. D. Ice | - ID 183912, Foreman |
| 2. J. L. Coleman | - ID 186653, Backhoe Operator |
| 3. F. C. Thomas | - ID 186624, Tamper Operator |
| 4. J. D. Priddy | - ID 186957, Track Repairman |
| 5. D. B. Bowling | - ID 186582, Track Repairman |

Furloughed

be paid both straight time and overtime hours at their respective rates of pay on the following dates:

- | | |
|-------------------|-------------------------|
| November 11, 1987 | - 8 hours straight time |
| November 12, 1987 | - 8 hours straight time |
| November 20, 1987 | - 8 hours straight time |
| November 22, 1987 | - 8 hours overtime |
| November 23, 1987 | - 8 hours straight time |

OPINION OF BOARD

While in the process of relocating and rebuilding tracks at the Ford Motor Company plant in Louisville, Kentucky and without the Carrier's permission, contractors engaged by Ford tore up track and a switch on the Carrier's property. Upon learning that the work was performed, the Carrier instructed Ford to rebuild the track and switch.

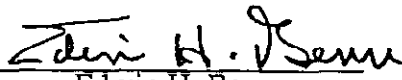
According to the Organization, on November 11, 1987 five employees of one of the contractors worked using an end loader; on November 12, the section was graded; on November 20, the contractors built approximately four rail lengths of track (only two and one-half rail lengths, according to the Carrier); on November 22, the section was tamped; and on November 23, 1987 a new switch was built. Further, according to the Organization, at the time of the incident, the named Claimants were furloughed.


The circumstances presented in this matter are unique. Under the peculiar facts of this case, and to which this award is confined, we are of the opinion that under the terms of the Agreement, the Carrier remained responsible for the repair and maintenance of its track after Ford's contractors inadvertently removed the rail sections and switch. The fact that the Carrier directed Ford to repair the track and switch, in this case, cannot change the result. The Carrier's remedy would have been to seek compensation from Ford (who, in turn, was free to make the appropriate compensatory adjustment with the contractors) for the removal of the Carrier's track and switch to the extent that the Carrier's forces had to repair the section.

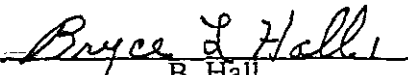
While the Carrier contends the time claimed is excessive and while there is a dispute as to how many rail lengths were removed, we believe that in this unique case the Organization has sufficiently demonstrated that the work was performed to the extent claimed.

AWARD

Claim sustained.


Edwin H. Benn
Neutral Member


L. Womble
Carrier Member


B. Hall
Organization Member

Jacksonville, Florida
February 24, 1989