

SPECIAL BOARD OF ADJUSTMENT NO. 1048

AWARD NO. 100

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of O. A. Hutcherson, P. D. Hudley, R. E. Hall, Jr., C. R. Lee, A. Wade, M. A. Shiveley, W. A. Burnette, T. L. Green, T. L. Neal, Jr., N. W. Hurt, M. W. Yeatts, D. L. Gregory, and M. H. Almond requesting that they each be paid for an equal amount of man-hours consumed by contractor, beginning January 12, 1998 and continuing, in that a contractor was used to perform fence work at mile post V 168.3, in the vicinity of Vabrook, Virginia.

(Carrier File MW-ROAN-98-13-LM-67)

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

AWARD

After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

Carrier has raised a procedural objection that the Board finds is dispositive of the claim. On November 24, 1997, Carrier served notice on the General Chairman of its intent to contract out certain fencing work, including 4500 feet of fencing at Milepost V 168.3. On March 10, 1998, the General Chairman filed a claim that provided, in relevant part:

Beginning on January 12, 1998, and continuing, contractors have been performing fencing work at MP V 169.4, Brookneal, Virginia. . . . There is no reason why M/W forces cannot perform this work as they have in the past. Also, the Carrier failed to furnish the Organization with required notice that this work was being contracted out.

On May 6, 1998, the Division Engineer responded, "We can find no evidence of any fence being constructed or repaired at this location. Also, we have no record of any fence being constructed at this location or being planned for this location." The Division Engineer denied the claim.

On July 2, 1998, the Organization appealed the denial to the Chief Engineer who affirmed the denial on

August 3, 1998. On October 1, 1998, the Organization appealed to the Director Labor Relations who affirmed the denial on November 24, 1998.

On April 5, 1999, the Organization wrote to the Director Labor Relations, in relevant part:

Since our original claim was filed, we have been advised that the actual location of this work was Mile Post MP V 168.6 at Red Hill on the Altvista District, instead of MP V 169.4. This location difference is actually less than .8 of a mile, and would not affect the merits of this claim. The fact remains that Carrier used an outside contractor to perform fencing work which is work that has been historically, traditionally and by past practice performed by M/W forces.

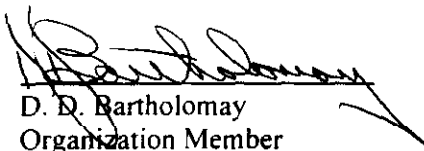
Carrier objects that the Organization improperly amended the original claim. We agree. Despite the Organization's protests to the contrary, the change in location was material and did affect the merits of the claim. The claim as progressed through the entire appeal process on the property not only involved a different location, but also a different substantive claim. As progressed through the appeal process, the Organization alleged that Carrier failed to provide notice of its intent to contract and Carrier denied that any fencing work occurred and that any fencing existed or was planned at the location identified. Thus, the dispute as progressed through the appeals on the property focused on whether the identified work ever occurred.

When the Organization amended the claim, it not only changed the location, but changed its theory of the claim. The Organization could no longer claim that Carrier failed to provide notice and now urged that Carrier conducted the conference and proceeded with the use of a contractor in bad faith. Section 3 First of the Railway Labor Act requires that claims "be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes. . ." A material amendment of the claim during the handling process violates Section 3 First and is not properly before the Board. See Third Division Award 13235.


Accordingly, the claim is dismissed.



M. H. Malin
Chairman and Neutral Member



D. D. Bartholomay
Organization Member



D. L. Kerby
Carrier Member