

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 19  
Case No. 19

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees  
and

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 concern to change out rail between Mile Post OVC 283.9 and Mile Post OVC 284.0 at the Loadout Facility in Letcher County on September 26 and 27, 1994 [System File 5(4)(94)/12(95-0043) LNR].
2. The Agreement was further violated when the Carrier failed to give the General Chairman advance written notice of its intent to contract out said work or discuss the matter in conference in good faith prior to contracting out said work as required by the May 17, 1968 National Agreement.
3. As a consequence of the violation referred to in Parts (1) and/or (2) above, Foreman W.C. Witt, Backhoe Operator A.F. Combs, Truck Driver R. Jones, Jr., Track Repairmen J.K. Noble and H.H. Williams, Welder G.R. Buckner and Welder Helper R.A. Meadows shall each be allowed sixteen (16) hours' pay at their respective straight time rates.

FINDINGS:

This Board, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees within the

meaning of the Railway Labor Act, as amended;; and

2. That the Board has jurisdiction over this dispute.

OPINION OF THE BOARD:

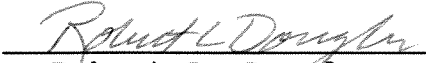
The record indicates that outside forces performed the disputed work. The Carrier relied on an alleged lease as an affirmative defense to the Organization's assertion that the Claimants should have received the assignment of such alleged scope covered work and that the Carrier had an obligation to furnish advance notice to the Organization of the assignment.


One of the Claimants, J.K. Noble, acknowledged in a letter, dated December 12, 1994, that the Kentucky May Coal Company had operated in the relevant area. In the absence of any persuasive evidence that the Organization had sought any additional evidence of a lease between the Carrier and the Kentucky May Coal Company, the Carrier provided sufficient evidence to sustain its affirmative defense that a lease existed for the applicable area. As a result, the Organization lacked a contractual right to hold the Carrier responsible for the performance of the disputed work or for the failure of the Carrier to provide advance written notice of the performance of such work by outside forces for the Kentucky May Coal Company.


As a consequence, no basis exists to award compensation to the Claimants.

AWARD:

The Claim is denied in accordance with the Opinion of the Board.

  
Robert L. Douglas  
Chairman and Neutral Member

  
Donald D. Bartholomay  
Employee Member

  
Patricia A. Madden  
Carrier Member

Dated: February 19, 1999