SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 100
Case No. **100**

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

CSX Transportation, Inc. (former Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. **The Agreement was violated when the Carrier assigned outside forces (Keylo Construction, Inc.) to install steel siding on the Equipment Storage Building which is located in the Saginaw Terminal, Saginaw, Michigan on October 8 through 11, 14 through 18 and 21 through 25, 1996 [System File C-TC-9911)/12(97-0105) CON].**

2. **The Agreement was further violated when the Carrier failed to timely and properly discuss the matter with the General Chairman in good faith prior to contracting out said work.**

3. **As a consequence of the violations referred to in Parts (1) and/or (2) above, B&B Foreman Keith Murringer shall be allowed one hundred twelve (112) hours of pay at the foreman's straight time rate.**

FINDINGS:

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

1. **That the Carrier and the Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act, as amended,; and**

2. **That the Board has jurisdiction over this dispute.**

OPINION OF THE BOARD:

A careful review of the record indicates that the Carrier notified the Organization in a letter, dated August 12, 1996, about the Carrier's plans to contract out the disputed work. The Carrier also included in the August 12, 1996 notification an

SBA 1110
Awd 100

unsigned letter form of contract with the proposed Contractor. The unsigned letter form of contract contained the date of August 9, 1996. The representatives of the Organization and the Carrier subsequently conferred on September 5, 1996 and disagreed about the propriety of the proposed action by the Carrier to engage outside forces to perform the disputed work. The outside forces subsequently performed the disputed work.

Rule 59 concerns classifications and provides, in pertinent part, that:

> (a) Proper classification of employees and a reasonable definition of the work to be done by each class for which just and reasonable wages are to be paid is necessary but shall not unduly impose uneconomical conditions upon the railway. Classification of employees and classification of work, as has been established in the past, is recognized.
>
> . . . .
>
> (c) In carrying out the principles of Section (a), bridge and structures forces will perform the work to which they are entitled under the rules of this agreement in connection with the construction, maintenance, and/or removal of bridges, tunnels, culverts, piers, wharves, turntables, scales, platforms, walks, signs, and similar buildings or structures. Mechanics engaged in such work (except those engaged in painting) will be classified as carpenters or masons, according to work. Mechanics engaged in painting will be classified as painters. Carpenter forces will be permitted to do spot painting in connection with repair work carried out by them in order to prevent unsightly appearance until painters come in to do programmed general painting. Painters will be permitted to drive nails in loose siding, glaze sash in connection with painting, and do other miscellaneous light work around buildings, structures, and signs on which they are carrying out painting work.

Appendix F of the Agreement contains a letter, dated October 24, 1957, from the Chesapeake and Ohio Railway Company's Assistant Vice President-Labor Relations, B.B. Bryant, to the Organization's General Chairman, F.M. Crance, who accepted the contents of the letter as signified by the General Chairman's signature at the end of the letter. The letter provides:

> Yours of April 30, 1957, subsequent correspondence and conference held at Huntington, W. Va., September 27, 1957, concerning your requests to revise and amend Rules 12 and 83 of the C&O Agreement (Southern Region and Hocking Division)

and Rule 59 of the Northern Region Agreement, including employees of the Fort Street Union Depot Company of Detroit and of the Manistee and Northeastern Railway Company.

As explained to you during our conference at Huntington, W. Va., and as you are well aware, it has been the policy of this company to perform all maintenance of way work covered by the Maintenance of Way Agreements with maintenance of way forces except where special equipment was needed, special skills were required, patented processes were used, or when we did not have sufficient qualified forces to perform the work. In each instance where it has been necessary to deviate from this practice in contracting such work, the Railway Company has discussed the matter with you as General Chairman before letting any such work to contract.

We expect to continue this practice in the future and if you agree that this disposes of your request, please so indicate your acceptance in the space provided.

The Organization asserts that the Carrier violated the longstanding advance notice requirement by acting in bad faith because the Carrier already had decided to contract out the disputed work as evidenced by the August 9, 1996 letter with the Contractor. The Organization further argues that the disputed work constituted scope covered work that did not require special skills or special.equipment to perform and that the Claimant possessed should have received the opportunity to perform the disputed work.

The Carrier insists that the August 9, 1996 letter did not contain the required signatures and therefore did not constitute a contract. The Carrier stresses that the advance notice and subsequent conference between the parties did not occur in bad faith. The Carrier emphasizes that insufficient forces and equipment existed on the property to enable the performance of the disputed work.

The record substantiates that the letter form of contract concerning the use of outside forces to perform the disputed work did not contain the required signatures to constitute a binding contract. In the absence of such signatures, the possibility existed that the representatives of the Organization and the Carrier could have reached an understanding during the September 5, 1996 meeting that arose as a consequence of the advance notice from the Carrier to the Organization. Under these specific circumstances, the record fails to prove that the Carrier acted in bad faith. In the absence of bad faith, the Organization's challenge to the Carrier's compliance with the longstanding advance notice requirement necessarily fails.

SBA 1110
Awd 100

The record of the handling of the dispute on the property omits sufficient evidence to discredit, disturb, or overturn the justification offered by the Carrier for the need to engage the outside forces in this particular instance. As a result, the record fails to prove that the Carrier violated the Agreement in this matter.

AWARD:

The Claim is denied.

Robert L. Douglas
Chairman and Neutral Member

Donald D. Bartholomay
Employee Member

Mark D. Selbert
Carrier Member

Dated: 6-1-01