

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 107
Case No. 107

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and

CSX Transportation, Inc. (Former Seaboard System
Railroad Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated beginning August 4, 1997 and continuing thereafter when the Carrier assigned an outside concern (Midway Construction Company) to perform installation of crossties in BIDS Terminal located in the Howell Yard, Georgia on the Atlanta Division [System File **97-21-DT/12(98-0082)** SSY].
2. The Agreement was further violated when the Carrier failed to confer with the General Chairman and reach an understanding prior to contracting out the work as stipulated in Rule 2, Section 1.
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants D. W. Thompson, R. M. Chaney, K. J. Turner and C. Heard shall each be allowed an equal proportionate share of the total number of man-hours consumed in the violation at their respective straight time and overtime rates of pay.

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 track repair 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 and that the Carrier had an obligation to furnish advance notice to the Organization of the assignment.

The Carrier had an obligation to provide the lease to the Organization to substantiate the Carrier's affirmative defense. The Carrier failed to do so. The claim therefore must be upheld.


Under these specific circumstances and in the absence of sufficient evidence in the record of the specific hours claimed by the Claimants, the remedy shall provide one day's pay to each Claimant.

AWARD:

The Claim is sustained in accordance with the Opinion **of the** Board. The Carrier shall make the Award effective on or before 60 days following the date of this Award.


Robert L. Douglas
Chairman and Neutral Member


Donald D. Bartholomew
Employee Member


Mark D. Selbert
Carrier Member

Dated: 8/15/01