

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 114

Case No. 114

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

CSX Transportation, Inc. (formerly The Baltimore  
and Ohio Railroad Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned outside forces (**Marta** Construction) to perform Maintenance of Way work (install switches and surface track) on the existing main line between Mile Posts 192.5 and 204.0 at Greenwich, Ohio beginning February 6 through 27, 1998 to the exclusion of Machine Operator J. E. Kimball [System File **B-TC-2924/12(98-1034)** BOR].
2. The Agreement was further violated when the Carrier failed to provide the General Chairman with advance written notice of its intent to contract out said work as required by Addendum 13.
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Machine Operator J. E. Kimball shall now be compensated "**for** eighty-nine and one-half (89 **1/2**) overtime hours, account of the aforementioned rules violations as well as this loss of work opportunity."

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:

The Scope Provision provides, in pertinent part, that:

(a) These rules govern the hours of service and working conditions of all employees in the Maintenance of Way and Structures Department, and the following classes of employees in the Transportation Department, subject, however, to the exceptions provided in paragraph (b) of this rule:

Cleaning Gang Laborers (Baltimore Terminal).

Bridge Watchmen.

Crossing Watchmen.

Cut Watchmen.

**Lampmen** (Lamp Tenders).

Pumpers.

Water Treating Plant Attendants at other than engine terminals.

Targetmen (except at Zanesville, Ohio).

(b) This Agreement does not apply to:

1. Bridge, Maintenance, Scale or Tunnel Inspectors.

Master Carpenters.

Track Supervisors and Assistant Track Supervisors.

General Foremen.

Other supervisory employees of equal or higher rank.

2. Clerical and Civil Engineering forces.

3. Signal Department forces.

4. Employees, as of the effective date of this agreement, covered by agreements with other Labor Organizations.

5.(a) Work which is to be performed under contracts let by the Company under any one or more of the following circumstances:

1. By reason of the magnitude of the project.

2. Because of the requirement of special skills necessary in connection with performance of the work.

3. Where equipment or facilities to be used in connection with the work are not possessed by the Company and available, consistent with requirements for a particular project.

4. Where the work with Company forces would limit the extent of the supplier's guarantee.

5. The time within which the work must be completed as related to other projects.

6. Employees covered by the agreement on the seniority district involved cannot be assigned to the work without impeding the progress of other projects.

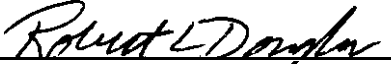
A careful review of the record indicates that the Carrier provided advance notice to the Organization on April 14, 1997 concerning the plan to use outside forces to perform the disputed work, which arose in connection with the construction of sections of main line track in the corridor between Chicago, Illinois and Ohio. At the request of the Organization, the Carrier provided

additional information in a letter dated May 9, 1997. The record demonstrates that the Carrier served the notice and the supplemental information on the Organization. The record therefore demonstrates that the Carrier provided the proper advance notice to the Organization.

The record confirms that the advance written notice covered the disputed work. In particular, the Division Engineer, K. L. Johnson, Jr., provided additional information, in a letter dated June 5, 1998 during the handling of the Claim on the property, that described the disputed work as "**part** of the upgrade" initiated by the Carrier. Although the Organization disputed this description, the record developed on the property fails to provide any basis to discredit, invalidate, or refute the detailed information furnished by the Carrier. As a result, insufficient credible evidence exists to substantiate that a violation occurred under the special circumstances reflected in the record.

AWARD:

The Claim is denied.

  
Robert L. Douglas  
Chairman and Neutral Member

  
Donald D. Bartholomay  
Employee Member

  
Mark D. Selbert  
Carrier Member

Dated: 8/15/01