

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 115
Case No. 115

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, without providing a notice as required by Appendix F, the Carrier assigned an outside concern (Dan's Enterprises) to plow snow off the roads at Wayne Yard, Wayne Michigan on March 14, 1997 [System File C-TC-10043/12(97-1790) CON].
2. As a consequence of the afore-stated violations, Foreman Mike Cameron shall now be allowed eight (8) hours of pay at his 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:

The record indicates that the Carrier failed to provide advance written notice to the Organization of the Carrier's intent to use outside forces to perform the disputed work of plowing snow, which employees represented by the Organization routinely had performed in the past.

The record fails to prove that an emergency situation existed that actually eliminated, precluded, or prevented the Carrier from providing any advance notice to the Organization and that permitted the Carrier to use the outside forces to perform the disputed work. The record omits any suggestion that the Carrier lacked the necessary equipment to perform the disputed work.

When the Carrier decides to engage an outside contractor in a snow situation and fails to provide any advance notice to the Organization, the Carrier has an extra burden to set forth in the record specific information to substantiate why the existing employee involved in the dispute (the Claimant) also could not have performed the disputed work and why the Carrier failed to provide any notice to the Organization. In the present case, the Carrier failed to provide such detailed evidence.

Specifically, the Division Engineer, C. E. Martin, provided a letter, dated July 3, 1997, during the subsequent handling of the Claim on the property. The letter indicated, in pertinent part, that:

Snow removal is not exclusive to Maintenance of Way and has been performed by other Carrier crafts as well as contractors in the past. Claimant was engaged in other necessary duties regarding tracks and switches in conjunction with the snow, was not available to simultaneously perform this work, and was compensated accordingly, including three and one-half (3½) hours overtime. During heavy snowfall, the Carrier does not have the resources to render all its facilities passable in a timely manner and must frequently rely on contracted assistance to plow roads and parking lots to make them passable for crews while the Section Gang cleans switches, lights burners, etc.

(Employees' Exhibit A-2 and Carrier's Exhibit B.)

In contrast, the record also contains unrefuted documentary evidence that details at least 15 occasions when the Claimant had plowed **snow** in the Wayne Yard with a Carrier vehicle. (**Employees'** Exhibit A-6.)

Under these highly unusual circumstances in which significant conflicting information exists about the needs of the Carrier and the understanding of the members of the bargaining unit about the perceived practice in the area, the Carrier had an extra responsibility to provide some advance notice to the Organization to candidly, clearly, and explicitly inform the Organization about the operational circumstances at the actual time of the

incident (March 14, 1997) that precluded the Claimant from performing the disputed work as the Claimant had done in the past and that therefore required the Carrier to engage an outside concern.

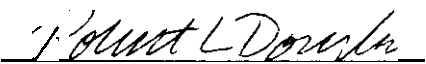
Of special importance in the present matter, the record omits any indication that the Carrier had provided to the Organization at the time of the disputed events (March 14, 1997) the type of detailed and relevant information disclosed by the Division Engineer during the handling of the Claim on the property on July 3, 1997. The record omits any probative evidence that the Carrier made any effort to provide such information at the time of the incident and also omits any probative evidence to explain why the Carrier failed to do so or could not do so.

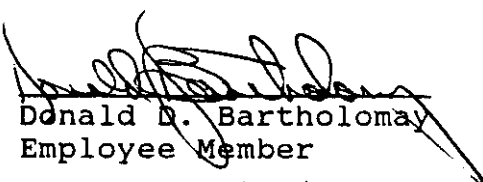
The fact that the Claimant may have performed other work related to removing snow did not absolve, excuse, or relieve the Carrier from the obligation to provide such minimal notice to the Organization at or about the time of the incident to inform the Organization of the situation. Insofar as the Carrier failed to meet its affirmative duty to make a reasonable and good faith effort to provide such notice or to explain why the circumstances may have prevented such notice, a violation perforce occurred.

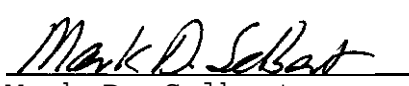
Under the special and highly unusual circumstances of the present dispute, the preponderance of the evidence substantiates the claim of the Organization.

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. Bartholomay
Employee Member


Mark D. Selbert
Carrier Member

Dated: 8/15/01