

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 119

Case No. 119

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

CSX Transportation, Inc. (former 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 (Progress Rail Service) to pick up rail and other track material between Mile Posts BF 180 and BF 245 on the Pittsburgh East Seniority District, Baltimore Service Lane on December 8, 9, 10, 11, 12, 15 and 16, 1997, instead of assigning Class 'A' Machine Operator W. F. Shippy [System File B-TC-3000/12(98-0968) BOR].

2. The Agreement was further violated when Carrier assigned outside forces (Progressive Rail Service) to pick up rail and other track material between Mile Post 95, Parkersburg and Mile Post 170, Pt. Pleasant on the Monongah West Seniority District, Cumberland Coal Business Unit on Saturday, February 28, 1998, instead of assigning Foreman J. L. Roush and Class 'A' Machine Operator T. L. Austin [System File **B-TC-3058/12(98-1134)**].

3. The Agreement was further violated when Carrier assigned outside forces (Progressive Rail Service) to pick up rail and other track material between Mile Post 95, Parkersburg and Mile Post 170, Pt. Pleasant on the Monongah West Seniority District, Cumberland Coal Business Unit on February 26 and 27, 1998, instead of assigning **Trackmen** R. L. Kuhn and C. R. Clary [System File **B-TC-3059/12(98-1135)**].

4. The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper advance notice of its intention to contract out said work as required by Addendum 13.

5. As a consequence of the violations referred to in Parts (1) and/or (4) above, Claimant W. F. Shippy shall be allowed "... 176 hours at Class 'A' Machine Operators rate of pay, plus credit with days for vacation qualification, credited with the months of October and November 1997 for retirement, credited with days for Feb 7 Section II guarantee and all other benefits, account of the aforementioned rule violation. ***"

6. As a consequence of the violations referred to in Parts (2) and/or (4) above, Claimants J. L. Roush and T. L. Austin shall be allowed "... eight (8) hours at the overtime rate, at the appropriate rates of pay for each claimant, (Foreman = J. Roush and Class 'A' Machine Operator = T. Austin account of the aforementioned rule violations. ***"

7. As a consequence of the violations referred to in Parts (3) and/or (4) above, Claimants R. L. Kuhn and C. R. Clary shall be allowed "... sixteen (16) hours at **Trackman** rate, each claimant, account of the aforementioned rule violations. ***"

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 presented as an affirmative defense and explanation a representation that the disputed work involved the sale of scrap rail and other related materials pursuant to Sale

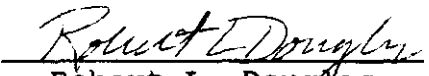
Order 975169, which became effective May 15, 1997. The Carrier further clarified that the outside concern had purchased the material on an "as is, where is" basis and that the outside concern merely had engaged in activity to remove the concern's property from the right of way.

With respect to Claim 1, Claim 4, and Claim 5, the documentary evidence reflects that Sale Order 975169 covered the disputed work. Under these circumstances, the evidence contained in the record fails to prove that the Carrier had violated the Agreement by using outside forces to perform the disputed work.


With respect to Claim 2, claim 3, Claim 6, and Claim 7, Sale Order 975169 fails to cover the disputed work. In the absence of sufficient proof to establish such an affirmative defense for the Carrier, the record reflects that the Carrier failed to provide the necessary notice to the Organization and therefore failed to prove the Carrier's affirmative defense.

AWARD:

Claim 1, Claim 4, and Claim 5 are denied in accordance with the Opinion of the Board. Claim 2, Claim 3, Claim 6, and Claim 7 are 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