

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 122
Case No. 122

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

CSX Transportation, Inc. (Former Atlanta & West Point-
WofA-AJT-Georgia Railroads)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it assigned or otherwise allowed five (5) employees of an outside contractor (Widemark Construction) to perform the maintenance work of undercutting switches and crossings and grading ballast between Mile Posts XXB 24.0 and 9.9 on the AWP-WofA Subdivision on the Atlanta Service Lane on March 17, 18, 19, 20, 24, 25 and 26, 1998 [System File 20(15)(98)/12(98-1196) AWP].

2. As a consequence of the violation referred to in Part (1) above, the A&WP-WofA-GARR-AJT Seniority District Maintenance of Way Track Subdepartment employes* listed below shall each "be compensated, at the appropriate pro rata rates for an equal proportionate share of 280 straight time hours, time expended by the contractor during claimants' regular assignment, and time and one-half rates for an equal proportionate share of 140 overtime hours, time expended by the contractor outside claimants' assignment, of the total (420) man hours expended by the Carriers' use of the contractor's employees, plus at the appropriate rates for any and all additional loss suffered as a result of Carrier's actions." (Emphasis in bold in original).

*P. Stephens
M. Watkins

C. Grant
R. McDonald

J. Bunn
L. H. Tudor

M. R. Farmer

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:

Rule 1 (Scope) specifies:

These Rules cover the hours of service, wages and working conditions for all employees of the Maintenance of Way and Structures Department as listed by Subdepartments in Rule 5 - Seniority Groups and Ranks, and other employees who may subsequently be employed in said Department, represented by Brotherhood of Maintenance of Way Employees.

This Agreement shall not apply to:
Supervisory forces above the rank of foremen.

Rule 2 (Contracting) provides:

Section 1

This Agreement requires that all maintenance work in the Maintenance of Way and Structures Department is to be performed by employees subject to this Agreement, except it is recognized that, in specific instances, certain work that is to be performed requires special skills not possessed by the employees and the use of special equipment not owned by or available to the Carrier. In such instances, the General Superintendent-Chief Engineer and the General Chairman will confer and reach an understanding setting forth the conditions under which the work will be performed.

It is further understood and agreed that although it is not the intention of the Company to contract construction work in the Maintenance of Way and Structures Department when Company forces and equipment are adequate and available, it is recognized that under certain circumstances, contracting of such work may be necessary. In such instances, the General


Superintendent-Chief Engineer and the General Chairman will confer and reach an understanding setting forth the conditions under which the work will be performed. In such instances, consideration will be given by the Superintendent-Chief Engineer and the General Chairman to performing by contract the grading, drainage and certain other Structures Department work of magnitude or requiring special skills not possessed by the employees, and the use of special equipment not owned by or available to the Carrier, and to performing track work and other Structures Department work with Company forces.

The special circumstances of the present dispute indicate that Rule 2 contains the key provision concerning the propriety of the Carrier's action. Under the particular circumstances of the present dispute as reflected in the record, Rule 2 requires an inquiry to determine whether the Carrier met the limited exceptions that enable outside forces to perform such disputed work. The record indicates that the Carrier repeatedly asserted that the Carrier had lacked sufficient manpower and available equipment to perform the disputed work. The Organization questioned these assertions, but failed to rebut the evidence concerning the available equipment by a fair preponderance of the credible evidence.


Under these precise circumstances and in the absence of sufficient evidence to the contrary, the Organization failed to meet its burden of proof that the Carrier had violated Rule 2 of the Agreement. Any other provisions of the Agreement relied on by the Organization lack persuasiveness in the context of the present dispute.

AWARD:

The Claim is denied in accordance with the Opinion of the Board.


 Robert L. Douglas
 Chairman and Neutral Member


 Donald D. Bartholomay
 Employee Member


 Mark D. Selbert
 Carrier Member

Dated: 9-6-01