

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 123

Case No. 123

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

CSX Transportation, Inc. (Former Seaboard System Railroad)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when, beginning February 10 up to and including February 27, 1998 and continuing, the Carrier assigned outside forces (Bankhead Welding) to perform Maintenance of Way Subdepartment work (weld rail) between Mile Posts ANA 595.0 and ANA 620.0 and A 576.6 and A 595.0 on the Jesup and Nahunta Subdivisions on the Jacksonville Service Lane [System File 24(10) (98)/12(98-1204) SSY].

2. As a consequence of the violation referred to in Part (1) above, Atlanta-Waycross Welding Subdepartment, Group A employees R. M. Leonard, M. P. Maloch, T. H. Hinton and G. Cook shall "be compensated, at the appropriate pro rata rates, for an equal proportionate share of (448) straight time hours, time expended by contractor during claimants regular work schedule, and time and one-half rates for an equal proportionate share of (160) overtime hours, time expended by contractor outside claimants work schedule, of the total 608 man hours thus far expended, plus any and all additional loss suffered, as a result of the Carrier's use of the contractor's employees." (Emphasis in bold in original).

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,  
clerical employees and Signal and  
Communication Department employees.

Rule 2 (Contracting) provides:

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 Chief Engineering Officer and 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 Chief Engineering Officer 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 Chief Engineering

Officer 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 record substantiates that the Carrier provided the Organization with the requisite advance notice of the disputed work; that the parties conferred about the disputed work; and that the parties failed to reach an understanding setting forth the conditions under which the work would be performed. As a consequence, the present dispute materially differs from those instances in which a carrier had failed to provide an organization with the required advance notice of the intention to use outside forces.

The failure of the parties to have reached an understanding in the present case does not mean that the Carrier violated the Agreement. Instead, Rule 2 requires a further inquiry to determine whether the Carrier met the limited exceptions that enable outside forces to perform such work, which the members of the bargaining unit historically and traditionally have performed and which therefore constitutes scope covered work.

The record omits any credible evidence that an emergency had existed. Although the Carrier maintained that the failure to perform the disputed work by outside forces would have led to train delays, the record omits any tangible proof to substantiate such a contention.


A careful review of the record indicates that the Carrier repeatedly asserted that the Carrier lacked sufficient manpower and special equipment to perform the disputed work. The Organization failed to rebut this evidence. In particular, the record omits any evidence that any qualified employees were on furlough or otherwise available to perform the disputed work. In fact, the record substantiates that the Claimants worked throughout the period covered by the claim on a straight-time basis and on an overtime basis. The record lacks any evidence that the work that the Claimants had performed lacked significance or importance. The record does reflect that some of this work involved the Claimants providing protection during the time the outside forces performed the disputed work and overseeing the work of the outside forces. Although the Claimants became available to provide protection and to perform certain inspection duties, the record omits persuasive evidence that the Claimants had become available to perform the actual disputed welding work. As a result, the Carrier perforce lacked the employees with special skills to perform the disputed work. In addition, the record fails to contradict the evidence that the


outside forces used certain specialized equipment to perform the in-line welding and that the Carrier lacked such specialized equipment.


In the absence of sufficient evidence to the contrary, the Organization failed to meet its burden to prove 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 very specific facts 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: 9-16-01