

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 126
Case No. 126

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 the Carrier assigned outside forces (Hulcher Professional Service, Inc.) to install perform track work (unloading rail) at Wayne, Michigan on the Saginaw Subdivision of the Detroit Division on May 28, 1998 [System File C-TC-2977)/12(98-1288) CON].
2. The Agreement was further violated when the Carrier failed to provide the General Chairman prior proper written notice of intent to contract the work referenced in Part (1) as required by Appendix F and failed to enter good faith negotiations as required by the December 11, 1981 Letter of Agreement.
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Machine Operator S. M. Foutch and Foreman N. **Rivera** shall now each be compensated for ten (10) hours' pay at their respective straight time rates of pay.

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:

A careful review of the record indicates that the Carrier notified the Organization in a letter, dated February 25, 1998, about the Carrier's plans to contract out certain work in Wayne,

Michigan. The representatives of the Organization and the Carrier subsequently conferred about the matter. The outside forces subsequently performed such work.

Appendix F of the Agreement contains a letter, dated October 24, 1957, from the Chesapeake and Ohio Railway Company's Assistant Vice President-Labor Relations, B.B. Bryant, to the Organization's General Chairman, F.M. **Crance**, who accepted the contents of the letter as signified by the General Chairman's signature at the end of the letter. The letter provides:

Yours of April 30, 1957, subsequent correspondence and conference held at Huntington, W. Va., September 27, 1957, concerning your requests to revise and amend Rules 12 and 83 of the C&O Agreement (Southern Region and Hocking Division) and Rule 59 of the Northern Region Agreement, including employees of the Fort Street Union Depot Company of Detroit and of the Manistee and Northeastern Railway Company.

As explained to you during our conference at Huntington, W. Va., and as you are well aware, it has been the policy of this company to perform all maintenance of way work covered by the Maintenance of Way Agreements with maintenance of way forces except where special equipment was needed, special skills were required, patented processes were used, or when we did not have sufficient qualified forces to perform the work. In each instance where it has been necessary to deviate from this practice in contracting such work, the Railway Company has discussed the matter with you as General Chairman before letting any such work to contract.

We expect to continue this practice in the future and if you agree that this disposes of your request, please so indicate your acceptance in the space provided.

The present dispute involves a limited claim by the Organization that the Claimants should have unloaded certain continuous welded rail. The Organization points out that the outside forces performed the disputed work.

A careful review of the record indicates that the performance of the disputed work occurred in conjunction with the performance of the overall project covered by the February 25, 1998 notice from the Carrier to the Organization. The record omits any hint that the Organization challenged the February 25, 1998 notice in connection with the overall project.


The record lacks any credible evidence to prove that the Carrier acted in bad faith. Furthermore, the record substantiates that the Carrier assigned certain bargaining unit members to participate in performing various tasks in connection with the

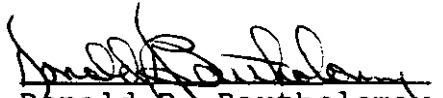
overall project.


Under these circumstances the record omits any basis to divide, partition, or separate the disputed work from the overall project covered by the February 25, 1998 notice. In addition, no basis exists to discredit, disturb, or overturn the justification offered by the Carrier for the need to engage the outside forces to perform the disputed work in this particular instance. As a result, the record fails to prove that the Carrier violated the Agreement in this matter.

AWARD:

The Claim is denied.


Robert L. Douglas
Chairman and Neutral Member


Donald D. Bartholomay
Employee Member


Mark D. Selbert
Carrier Member

Dated: - -01