

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 129
Case No. 129

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 (Industrial Contractors) to perform Maintenance of Way and Structures Department work of cutting, welding and grinding rail between Mile Posts 87.2 and 92.0 on the Plymouth Subdivision of the Detroit Division from October 13 through November 25, 1998 [System File **C-TC-2077)/12(99-0105)** CON].
2. The Agreement was further violated when the Carrier failed to discuss the proposed contracting out of the work described in Part (1) above, in accordance with Appendix **"F"** of the Agreement.
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Messrs. F. R. Hall and W. R. Whipple shall each be allowed two hundred sixty-six (266) hours' pay at their respective straight time rates.

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:

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.

A careful review of the record indicates that the Carrier failed to notify the Organization about the disputed work. The Carrier provided a letter, dated July 14, 1999, about the Carrier's plans to contract out certain work. The July 14, 1999 letter, however, did not cover the disputed work. In particular, the July 14, 1999 covered work at a different location than the disputed work.

The Carrier's failure to provide advance notice to the Organization about the disputed work at the actual location of the disputed work therefore did not constitute adequate, effective, or sufficient notice within the requirements of Appendix F of the Agreement.

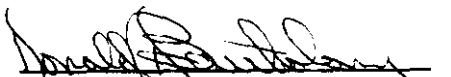
The record indicates that the outside forces subsequently performed the disputed work. The disputed work constituted scope covered work. The Carrier therefore had an affirmative obligation to provide advance notice to the Organization about the disputed work. The Carrier failed to do so. As a result, the record proves that the Carrier violated the Agreement in this

matter.

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: 9-6-01