

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 131  
Case No. 131

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

CSX Transportation, Inc. (formerly The 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 to perform Maintenance of Way work (perform welding work) on the Monongah East Seniority District of the Cumberland Coal Business Unit from October 26 through November 27, 1998 [System File B-TC-3369/12(99-0257) BOR].
2. The Agreement was further violated when the Carrier failed to meet with the Organization's representative and attempt to reach a good-faith resolution of the Carrier's proposed contracting plans as required by Addendum 13.
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, the Carrier shall arrange to "... pay for 240 hours from Trackman to Welder rate of pay for Mr. Shuttlesworth and Mr. Wilkerson and 240 hours at Welder Helper rate of pay for furloughed employees B. L. Williams and D. E. Manear, 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 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:

Addendum 13 to the Memorandum of Agreement, dated June 13, 1978, provides in pertinent part, that:

1. In the event the Carrier decides that in light of the criteria specified in Paragraph (b)5.(a) of the Scope Rule of the Schedule Agreement it is necessary to contract work of a type currently performed by the employees coming under the Scheduled Maintenance of Way Agreement, it shall give the General Chairman notice of intent to contract and the reasons therefor, together with supporting data. Advance notice shall not be required concerning minor transactions except as provided in Attachment "A" of this Agreement.

The Scope Rule, Paragraphs (b)5.(a)3 and (b)5.(a)6 provides that:

(b) This Agreement does not apply to:

\* \* \*

5.(a) Work which is to be performed under contracts let by the Company under any one or more of the following circumstances:

\* \* \*

3. Where equipment or facilities to be used in connection with the work are not possessed by the Company and available, consistent with requirements for a particular project.

\* \* \*

6. Employees covered by the agreement on the seniority district involved cannot be assigned to the work without impeding the progress of other projects.

A careful review of the record indicates that the Carrier provided advance notice to the Organization on September 10, 1998 about the plan to use outside forces to perform the disputed work. The record further reveals that the parties conferred on September 17, 1998 about the matter. In particular, a September 17, 1998 letter from the Vice Chairman of the Organization to the Director of Employee Relations of the Carrier confirms that on September 17, 1998 a detailed discussion occurred between the

parties about different aspects of the proposed action of the Carrier.

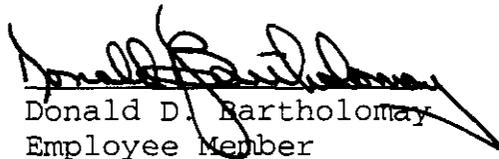
The Carrier's notice to contract asserted that it did not have adequate equipment or forces available with which to perform the work now claimed by the Organization. Nothing substantial to the contrary exists in this record. It appears that the Carrier met the exceptions in the afore-quoted rule.

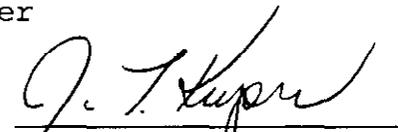
As a result, insufficient credible evidence exists to substantiate that a violation occurred under the special circumstances reflected in the record.

AWARD:

The Claim is denied.

  
Robert L. Douglas  
Chairman and Neutral Member

  
Donald D. Bartholomay  
Employee Member

  
J. Terry Keyser  
Carrier Member

Dated: 5/31/02