

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 158  
Case No. 158

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees  
  
and  
  
CSX Transportation, Inc.

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it assigned Signal Department employees to perform Maintenance of Way work (flagging for a contractor digging ditches, cleaning and repairing culverts and repairing ballast sections) on the Richmond Seniority District between Mile Posts 85.5 and 112 on October 11 through 16, 1999, October 18 through 23, 1999, October 25 through 30, 1999, November 2 through 11, 1999 and December 4 and 5, 1999, instead of Foremen T. E. Wright and W. H. Dillard [System Files K101326699/12(00-0117), K101326599/12(00-0116), K101326799/12(00-0118) and K101326899/12(00-0119)].
2. As a consequence of the violation referred to in Part (1) above, Claimants T. E. Wright and W. H. Dillard shall now each be compensated for one hundred eighty-four (184) hours' pay at their respective straight time rates of pay and ninety-one and one-half (91.5) hours' pay at their respective time and one-half 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:

The present dispute involves five consolidated claims about the assignment and performance of flagging work. A careful review of

the record indicates that the Organization substantially relied on the contents of certain written statements allegedly provided by Claimant Wright to prove that the Carrier had violated the Agreement. Although the Organization's submission includes these documents, the Carrier's submission surprisingly omits these documents and omits any reference to the contents of any of these documents.

Specifically, the Organization's submission includes a letter, dated November 9, 2000, from the Vice Chairman of the Organization to the Senior Director for Employee Relations of the Carrier with an attachment of a handwritten letter, dated March 1, 2000, allegedly from Claimant Wright. (Employees' Exhibit F-1 and Attachment No. 1 to Employees' Exhibit F-1.) The Organization's submission also includes: a letter, dated February 26, 2001, from the Vice Chairman of the Organization to the Director for Employee Relations of the Carrier with attachments of another handwritten letter, dated February 14, 2001, evidently from Claimant Wright; an undated handwritten letter ostensibly from a Signal Maintainer (J. W. Terrell); and a "punch list" from Qwest, which installed fiber optics cable along the Carrier's right of way allegedly pursuant to an easement and thereby generated the need for the disputed flagging work. (Employees' Exhibit F-2 and Attachments 1, 2, and 3 to Employees' Exhibit F-2.)

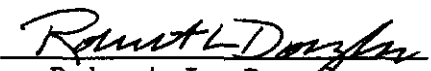
A close examination of the sequence of the documents during the handling of the Claims on the property establishes that some of these documents were dated before the Carrier's denials on June 15, 2000 of the appeals by the Organization in each of the referenced consolidated Claims. The transmittal letter by the Vice Chairman of the Organization to the Carrier forwarding these documents to the Carrier, however, occurred after the Carrier's denial of the Organization's appeals in each of the consolidated Claims. Of special and critical importance, none of the correspondence on the property during the handling of these Claims reflects that the Carrier ever received the handwritten documents (Employees' Exhibit F-1 and F-2) or discussed the contents of any of these documents with the representatives of the Organization. In fact, the record further reflects that the Carrier's submission in the present matter omits these documents and omits any reference to the contents of any of these documents.

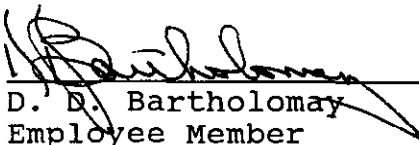
As a consequence, no evidence exists in the present record that the Carrier ever had an opportunity to consider the contents of this correspondence or to investigate the matters raised by the information allegedly furnished by Claimant Wright and the Organization in these documents. Under these highly unusual circumstances and in the absence of any evidence that the Carrier had received or was aware of any of these potentially important and potentially pivotal documents so heavily relied on by the

Organization, the present consolidated Claim must be dismissed.

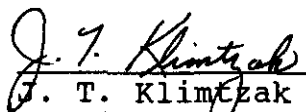
AWARD:

The Claim is dismissed.

  
Robert L. Douglas  
Chairman and Neutral Member

  
D. D. Bartholomay  
Employee Member

Dated: April 30, 2004

  
J. T. Klimczak  
Carrier Member  
*Dissent Attached*

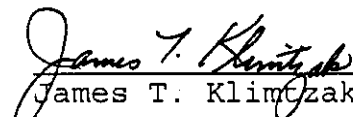
CARRIER'S DISSENT TO  
SPECIAL BOARD OF ADJUSTMENT NO. 1110  
AWARD NO. 158

The Brotherhood of Maintenance of Way Employees (BMWE) in its claim asserted exclusive performance of flagging work accomplished in this case by employees represented by the Brotherhood of Railroad Signalmen. Award No. 158 dismissed the claim because, at the behest of BMWE in the hearing, the Arbitrator determined the BMWE file contained additional material for which there was no confirmation or evidence of on-property exchange.

The Arbitrator's rationale and decision are erroneous and clearly a deliberate act to avoid issuing a decision on the substantive issue. BMWE's *de novo* material should have been ignored by the Arbitrator [cf., National Railroad Adjustment Board, Third Division Award Nos. 26257, 25575, 22054, 21463] and not used as a vehicle to circumvent the very authority bestowed upon the Arbitrator, as Chairperson and Neutral Member, by the Agreement establishing the Board and its functions. The Arbitrator's pioneer theory, albeit fundamentally flawed, grants a license for petitioners to act irresponsibly and surreptitiously reap an advantage in the industry's already taxed arbitration forums.

Notwithstanding, BMWE's claim obviously did not satisfy the burden of proof to assert exclusive rights to work and the new material presented by BMWE with its submission was of no probative value. The record before the Board clearly demonstrated that flagging duties are not exclusive to the Craft or any particular employee throughout the system. Also, the Board was apprised during the hearings of contemporary arbitral decisions, adding to the wealth of precedent cited in the Carrier's submission supporting that the claim be denied. See Public Law Board No. 6525, Award No. 44 [BRS v. CSXT (Vaughn), 09/04/03] and Public Law Board No. 6564, Award No. 10 [BMWE v. CSXT (Parker), 03/24/04].

The Carrier dissents to Award No. 158 that is purposely erroneous.

  
James T. Klimczak  
Carrier Member-SBA No. 1110  
April 30, 2004