

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 74
Case No. 74

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and

CSX Transportation, Inc. (former Louisville and
Nashville 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 re-roof the Signal Maintainer's building at Tilford Yard in Atlanta, Georgia on February 15, 16, 17, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, March 1, 2, 4, 5, 6, 7, 8 and 9, 1996 [System File 44(6)(96)/12(96-965) LNR].

2. The Agreement was further violated when the Carrier failed and refused to make a good-faith effort to use its Maintenance of Way employees to perform the work as stipulated in Appendix J of the December 11, 1981 Letter of Agreement.

3. As a consequence of the violations referred to in Parts (1) and/or (2) above, B&B Foremen C. L. Wilson, F. E. Latimore, Carpenters M. W. Moore, B. L. Shaver, L. S. Nation and Carpenter Helpers B. H. Wood and J. A. Lamb shall each be allowed ten (10) hours' pay at their respective straight time rates for each of the claim dates listed in Part (1) above and the pay differential prescribed in Rule 41(f).

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 record confirms that various governmental entities regulate the removal of asbestos, which requires special equipment and certified personnel. In the present dispute, the Carrier arranged for the removal of certain asbestos material in conjunction with the replacement of a roof by outside forces. The record indicates that the Carrier had retained an outside contractor to repair a similar roof in the immediate vicinity in the past without any objection by the Organization.

Rule 2 (Contracting) authorizes the Carrier to use outside forces when the members of the bargaining unit lack the required special skills and also when the Company lacks the special equipment to perform the work:

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.

As a result, the need for the Carrier to comply with government regulations covering asbestos removal justified the Carrier's decision to retain a company that employed personnel with special

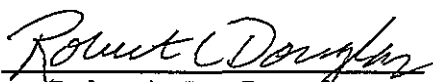
expertise and that had special equipment not owned by the Carrier to perform the disputed work. As a consequence and under these specific circumstances, the Carrier did not violate the Agreement by permitting the specially certified outside forces to perform the disputed work.

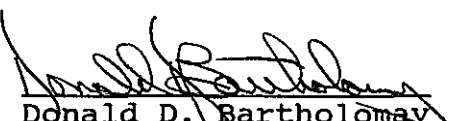
The record also indicates that the Carrier complied with the requirement to provide advance written notice to the Organization about the intent to use the outside forces. Specifically, the record substantiates that the Carrier provided the appropriate notice to the Organization on January 25, 1996, which preceded the disputed work. In addition, the record reflects that the parties discussed the matter on February 1, 1996.


In addition, the record omits any persuasive evidence that the Carrier had violated Appendix J of the 1981 National Agreement (Berge/Hopkins Letter), which directs the Carrier to make a good faith effort to reduce the amount of contracting to the extent practicable. The record provided by the parties in this specific case fails to prove that the Carrier could have separated the asbestos removal function from the roof replacement function in a way that would have enabled the Claimants to perform some of the disputed work.

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: Nov. 2, 2000