

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 82
Case No. 82

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

CSX Transportation, Inc. (Former Seaboard System Railroad)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned outside forces (Dillard Construction Company) to perform the work of reconstructing roadbed between Mile Posts ANB 683.6 and ANB 685.5 near Hatley, Georgia on August 18 through September 25, 1997 [System File 24(24)(97)/12(98-0305) SSY].

2. As a consequence of the violation referred to in Part (1) above, Messrs. J. W. Sumner, M. D. Moore, D. S. Spivey, W. A. Busby and R. M. Drury shall each be compensated at their respective straight time rates for an equal proportionate share of the one thousand two hundred (1,200) straight time hours and the one thousand one hundred forty (1,140) overtime hours expended by the outside forces in the performance of the work described in Part 1.

FINDINGS:

This Board, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act, as amended,; and

2. That the Board has jurisdiction over this dispute.

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OPINION OF THE BOARD:

Rule 1 (Scope) specifies:

These Rules cover the hours of service, wages and working conditions for all employees of the Maintenance of Way and Structures Department as listed by Subdepartments in Rule 5 - Seniority Groups and Ranks, and other employees who may subsequently be employed in said Department, represented by Brotherhood of Maintenance of Way Employees.

This Agreement shall not apply to:
Supervisory forces above the rank of foremen,
clerical employees and Signal and
Communication Department employees.

Rule 2 (Contracting) provides:

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.

The special circumstances of the present dispute indicate that

Rule 2 contains the pivotal provision concerning the propriety of the Carrier's action. The record substantiates that the Carrier provided the Organization with the requisite advance notice of the disputed work. In particular, the record includes the August 13, 1997 notice from the Carrier to the Organization concerning the disputed work. The August 13, 1997 notice described the disputed work as follows:

The work to be contracted will include clearing adjacent to the main line, grading, subballast placement, tie and track installation. CSXT forces will install the new switch on the north end, where the siding will meet the main line. We are contracting the work because all of our forces are presently engaged in other work and this project must be completed in a timely manner.

The record further discloses that the Organization apparently elected not to participate in such a discussion concerning the disputed work or to seek another opportunity to discuss the matter. The parties perforce failed to reach an understanding setting forth the conditions under which the work would be performed.

The failure of the parties to reach an understanding in the present case does not mean that the Carrier violated the Agreement. Under the particular circumstances of the present dispute as reflected in the record, Rule 2 requires a further inquiry to determine whether the Carrier met the limited exceptions that enable outside forces to perform such disputed work.

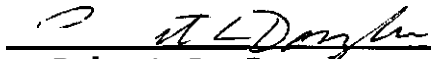
The record indicates that the Carrier repeatedly asserted that the Carrier had lacked sufficient manpower and available equipment to perform the disputed work. The Carrier provided sufficient evidence that all of the employees were fully working during the relevant time period. The Organization failed to rebut this evidence. As a result, the Carrier perforce lacked the employees with special skills to perform the disputed work during the relevant time period. Furthermore, the Carrier provided un rebutted evidence that the Carrier lacked the necessary and available equipment to perform the disputed work.

Under these precise circumstances and in the absence of sufficient evidence to the contrary, the Organization failed to prove by a preponderance of the evidence that the Carrier had violated Rule 2 of the Agreement. Any other provisions of the Agreement relied on by the Organization lack persuasiveness in the context of the present dispute.

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AWARD:

The Claim is denied in accordance with the Opinion of the Board.


Robert L. Douglas
Chairman and Neutral Member


Donald D. Bartholomew
Employee Member


Mark D. Selbert
Carrier Member

Dated: 5/14/01