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SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 36  
Case No. 36

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 to load crossties into gondola cars at Davis Yard and Acme Yard on the Wilmington Subdivision of the Florence Division commencing November 9, 1994 [System File 23 (1) (95)/12(95-0274) SSY].
2. The Agreement was further violated when the Carrier failed to give the General Chairman fifteen (15) days' advance written notice of its intent to contract out said work as required by Article IV of the May 17, 1968 National Agreement.
3. As a consequence of the violation referred to in Parts (1) and/or (2) above, Track Subdepartment, Group A employees T. H. Turbeville, G. C. Cashwell, R. K. Wright, S. J. Newkirk, W. D. Murray, N. H. Cobett, C. E. Carr, C. G. Rhodes, H. L. Genwright and G. E. Hemmingway shall each receive, at their respective straight time rates of pay, an equal proportionate share of the total number of manhours expended by the outside forces commencing November 9, 1994 and continuing until the violation ceases.

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.


OPINION OF THE BOARD:

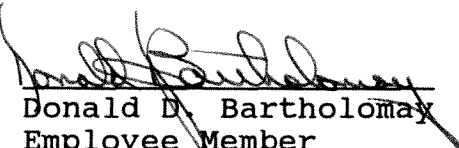
The record indicates that outside forces performed the disputed disposal of scrap railroad ties stockpiled in certain centralized yards by the Carrier. In citing the Hazardous and Solid Waste Act of 1984, the Carrier provided credible evidence that special government regulatory requirements existed for the disposal of the spent railroad ties, which constituted industrial waste. As a result, the disputed work of loading the crossties from the centralized locations into gondolas as an incidental part of the disposal of the scrap railroad ties fails to fall within the scope of the customary and traditional maintenance work performed by the members of the bargaining unit along the Carrier's right-of-way. In the absence of any credible evidence that the members of the bargaining unit had performed the disputed work in the past, the Organization failed to meet its burden of proof under the precise circumstances of the present case.


With respect to the advance notice issue, the record indicates that the Organization failed to raise this issue during the handling of the dispute on the property. As a consequence, the Board shall not consider such a new argument in the present proceeding.

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

  
Patricia A. Madden  
Carrier Member

Dated: October 6, 1989