

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 53
Case No. 53

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and

CSX Transportation, Inc. (former Seaboard System
Railroad Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when, without a conference having been held between the Chief Engineering Officer and the General Chairman as required by Rule 2, it assigned outside forces (Bobby Samper of Columbia Scrap Company) to perform Maintenance of Way work (removing rail and track related material from the right of way) between Mile Posts SLA660.7 and SLA663.7 on the Ocilla Branch of the Fitzgerald Subdivision beginning October 24 through December 2, 1995 and continuing [System File 26(20)(95)/12(96-0347) SSY].

2. As a consequence of the aforesaid violation, Maintenance of Way employees D. A. Calhoun, J. R. Keene, C.D. Coleman, S. M. McWhorter and B. M. Young shall:

'... now be compensated, at their respective pro rata rates for an equal proportionate share of (1,856) straight time hours, expended by the contractor during the claimants' regular assigned hours, and time and one-half rates for an equal proportionate share of (944) overtime hours, expended by the contractor outside claimants' regular assigned hours, of the total 2,800 man hours thus far expended, by the Carrier's use of the contractor's employees, plus at the appropriates [sic] rates for any and all additional loss "suffered, as a result of this

Carrier's actions.' (Emphasis in bold in original)"

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:

A careful review of the record indicates that the alleged violation occurred on track that the Company had abandoned effective as of July 1, 1995. An Interstate Commerce Commission Decision, dated May 11, 1995, reflected that the track no longer constituted a part of the Carrier's operating system because "the only rail patron on the line has not sought rail service since the line was restored to service in 1993." (Interstate Commerce Commission Decision, Docket No. AB-55 (Sub-No. 489x) at 2 (May 11, 1995).)

In granting an exemption to the applicable prior approval requirements, the Interstate Commerce Commission further indicated:

By allowing CSXT to avoid the expense of retaining and maintaining a line that generates no traffic or revenue, an exemption will promote safe and efficient rail transportation, foster sound economic conditions, and encourage efficient management

(Id.)

The record substantiates that the disputed work began on October 24, 1995. As a result, the Carrier no longer had maintained the line at the time outside forces performed the disputed work. In the absence of any maintenance work, the Carrier did not violate the applicable Scope Rule, which covers maintenance work, by having the disputed work performed by outside forces. In this regard, the record omits sufficient probative factual evidence that the Carrier retained the type of control of the line to support a finding that the disputed work constituted maintenance work.

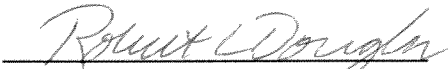
Due to the inapplicability under these special circumstances of


the Scope Rule, the Carrier did not have an affirmative obligation to confer with representatives of the Organization before engaging the outside forces. In the absence of such a duty, the Carrier did not commit a violation by failing to participate in such a discussion.

For these reasons, the Award shall indicate that the Claim is denied.

AWARD:

The Claim is denied.


Robert L. Douglas
Chairman and Neutral Member


Donald D. Bartholomay
Employee Member


Patricia A. Madden
Carrier Member

Dated: October 6, 1999