

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 55

Case No. 55

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, without conferring and reaching an understanding with the General Chairman in accordance with Rule 2, it assigned outside forces (Core Carriers) to transport track equipment (backhoes) from Seymor, Indiana to New Castle, Pennsylvania on August 16, 17 and 18, 1996 [System File C-TC-6455-SPG/12(96-1344) CSX].
2. The Carrier violated the Agreement when, without conferring and reaching an understanding with the General Chairman in accordance with Rule 2, it assigned outside forces (Core Carriers) to transport track equipment (backhoes) from New Castle, Pennsylvania to Columbus, Ohio on August 23, 24 and 25, 1996 [System File C-TC-6456-SPG/12(96-1345) CSX].
3. The Carrier violated the Agreement when, without conferring and reaching an understanding with the General Chairman in accordance with Rule 2, it assigned outside forces (Core Carriers) to transport track equipment (backhoes) from Columbus, Ohio to Melbourne, Kentucky on September 13, 14 and 15, 1996 [System File C-TC-6457-SPG/12(96-1346) CSX].
4. As a consequence of the violation referred to in Part (1) above, Machine Operator C. Wallen shall be allowed twenty-

two (22) hours' pay at his applicable SPG operator's time and one-half rate.

5. As a consequence of the violation referred to in Part (2) above, Machine Operator C. Wallen shall be allowed fifteen (15) hours' pay at his applicable SPG operator's time and one-half rate.

6. As a consequence of the violation referred to in Part (3) above, Machine Operator C. Wallen shall be allowed fifteen (15) hours' pay at his applicable SPG operator's time and one-half rate.

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:

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.

Rule 1 (Scope) is a general rule, which omits any specific reference to the disputed work. In the absence of such a specific reference and in the absence of a past practice or a special agreement to demonstrate an understanding between the parties about transporting the particular type of equipment (backhoes) for substantial distances in a safe manner, the record omits any basis to sustain the Organization's claim.

The evidence indicates that the Carrier previously had appropriate equipment to transport the vehicles involved in the present claim for relatively long distances. The present record, however, includes un rebutted evidence that the Carrier did not have available the necessary equipment to perform the disputed work in a safe manner. Furthermore, the record omits any credible evidence that the Carrier had an affirmative duty to obtain such vehicles.

Special Board of Adjustment 1096, which had jurisdiction over the same parties, found that the Carrier did not commit a violation by abolishing certain System Tractor-Trailer Operator positions. ((February 12, 1998) (Nicolau, Chairman).) System Board of Adjustment 1096 concluded that no obligation existed for the Carrier to "continue to own trucks and operate them with its own employees." (Id. at 15.)

Under these precise circumstances and in the absence of

sufficient evidence to the contrary, the Organization failed to prove that the Carrier had violated the Agreement. In this regard, mere assertions lack the probative value of specific evidence to meet the requisite burden of proof for the Organization. Any other provisions of the Agreement relied on by the Organization lack persuasiveness in the context of the present dispute.

In summary, the Organization failed to prove that the disputed work constituted scope work under these special circumstances, which had significant safety implications. In the absence of such a finding, the Carrier lacked an obligation to confer with the General Chairman before engaging the outside forces to perform 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


Patricia A. Madden
Carrier Member

Dated: October 6, 1999