

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 10
Case No. 10

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

CSX Transportation, Inc. (formerly the Baltimore and
Ohio 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 (Kemron Environmental Services Inc.) to perform Maintenance of Way work (pouring concrete into a scale pit) at Moorefield Yards, Indianapolis, Indiana, on May 23, 1994 [System File B-TC-9547/12(94-808 BOR)].
2. The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intent to contract out the work.
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Messrs. A. G. Roark, M. D. Smith, K. N. Bergman, R. E. Barksdale and L. Farris shall each be allowed eight (8) hours' pay at their respective rates.

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:

On April 22, 1993 a United States District Court issued a consent decree that required the Carrier to comply with the Clean Water Act by arranging for the cleanup of an empty pit under

certain track. After the Carrier engaged outside forces to do so, the Organization claimed that the Carrier improperly permitted the outside forces to pour concrete into the empty pit, which had contained a track scale, to seal the pit.

The location of the property under the Carrier's main track constitutes the requisite basis to trigger application of the scope provision of the collective bargaining agreement. The scope provision, however, affords the Carrier an opportunity to use outside forces when the members of the bargaining unit lack the required special skills and also when the Company lacks the equipment or facilities to perform the work.


The record substantiates that the overall environmental cleanup required special skills and special expertise. The record omits any evidence that bargaining unit members had participated in court-ordered environmental cleanups in the past. Although the scope rule embraces the general task of pouring concrete, pouring concrete as one specific aspect of a court-ordered overall environmental cleanup performed by a company with special expertise constitutes work outside the scope provision because of the integrated nature of the environmental cleanup and the special needs that exist to perform such a cleanup. As a consequence and under these specific circumstances, the Carrier did not violate the Agreement by permitting the specially licensed outside forces to pour the concrete.


Notwithstanding this substantive finding, the Carrier failed to comply with the Addendum 13 requirement to provide advance written notice to the Organization about the intent to use outside forces. The Carrier failed to provide such notice.


With respect to a remedy for this violation, the Carrier failed to provide any explanation for the failure to provide advance written notice to the Organization. In the absence of any mitigating explanation from the Carrier for failing to provide the required advance notice or any credible challenge by the Carrier to the requested remedy of eight hours of pay for the named Grievant's, the Board shall grant the requested relief.

AWARD:

The Claim is sustained 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: 12/3/98