

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 14  
Case No. 14

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees  
  
and

CSX Transportation, Inc. (formerly Louisville and  
Nashville 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 and Assistant Roadmaster T. Long to spread weed killer along the right of way between Mile Posts 116.7 and 129.6 on the Dresden Branch Line, Nashville Division on June 16, 1994, instead of assigning Messrs. D. W. England and R. K. Allen [System File 14(44) (94) / 12(94-0866) LNR].
- 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 said work in accordance with Article IV of the May 17, 1968 National Agreement.
- 3) As a consequence of the violations referred to in Parts (1) and (2) above, Mr. D. W. England shall be allowed three (3) hours' pay at the foreman's straight time rate and Mr. R. K. Allen shall be allowed three (3) hours' pay at the Rank 3 rate.

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:

With respect to Claimant England, the submission in the present dispute includes a document that the Claimant executed on November 4, 1997. The document, titled "Settlement and Final Release of All Claims," applies to the present matter. As a result of the release, the Board lacks jurisdiction to consider the merits of the present claim with respect to Claimant England.

With respect to Claimant Mr. Allen, this case involves the spraying of weed killers along the right-of-way by licensed outside forces. The use of such herbicides occurs in the context of increased governmental regulation by the Environmental Protection Agency.

The record indicates that outside forces have performed this function for many years and use special equipment that trained and licensed personnel operate. In the absence of any persuasive evidence to the contrary, the Carrier had the right to arrange to have outside forces perform such work.

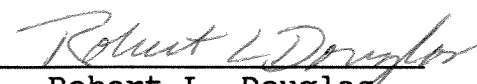
The record omits sufficient evidence to prove that a supervisor improperly performed the disputed flagging while accompanying the outside forces on June 16, 1994. The limited and incidental flagging activity, which occurred under the present circumstances, did not violate any part of the Agreement. The supervisor, as a qualified employee, had a right to provide such limited flagging protection--which lasted for less than one full day--while he accompanied the outside forces in his supervisory capacity.

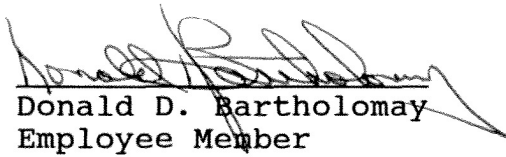
The longstanding practice on the property of using outside forces for spraying weed killers eliminated any requirement for the Carrier to provide to the Organization advance written notice of such limited and incidental action.

Under all of these precise conditions, the Organization failed to meet its burden of proof.


**AWARD:**

The Claim is dismissed with respect to Claimant England in accordance with the Opinion of the Board. The Claim with respect to Claimant Allen is denied in accordance with the Opinion of the Board.

  
Robert L. Douglas  
Chairman and Neutral Member

  
Donald D. Bartholomay  
Employee Member

Dated: March 5, 1999

  
Patricia A. Madden  
Carrier Member