

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 17
Case No. 17

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and

CSX Transportation, Inc. (Former 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 (Queen City Construction Company) to perform Maintenance of Way work (repair track) on G. E. Lead between Mile Posts 0.5 and 1.5 beginning April 4, 1994 and continuing [System File 10(18)(94)/12(94-0778) LNR].
2. The Agreement was further violated when the Carrier failed to furnish the General Chairman 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 violation referred to in Part (1) and/or (2) above, the Claimants* listed below shall each be allowed eight (8) hours' pay at their respective straight time rates and two (2) hours' pay at their respective time and one-half rates for each day the outside forces performed the work in question beginning April 4, 1994 and continuing until the violation ceases.

*T. H. Ashby	C. Simmons	D. B. Bowling
W. J. Hess	N. E. LaHue	J. M. English
G. A. Campbell	F. C. Thomas	F. Vincent
V. D. Russell	J. M. Bowling	J. J. Savage
J. E. Houck	M. E. Langford	C. G. Armenta
S. T. Reid	J. D. Ice	
J. W. Yocum	M. T. Willett	

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 track repair work. The Carrier relied on an alleged lease as an affirmative defense to the Organization's assertion that the Claimants should have received the assignment and that the Carrier had an obligation to furnish advance notice to the Organization of the assignment.

The record includes the referenced lease (Contract No. CSX-021678), which covered tracks 973, 973-A, 975, 975-A, 975-B, and 975-C. A careful review of the record--which also includes twenty detailed photographs of the relevant tracks--proves that the track repair work occurred on a lead track not covered by the lease.

As a result of the evidence set forth in the record, the Carrier failed to prove its affirmative defense. In the absence of an affirmative defense and under these special circumstances, the Claim must be upheld.

With respect to the appropriate remedy, the record only contains persuasive evidence that the disputed work occurred on April 21, April 22, April 23, and April 24, 1994. The record further substantiates that the named Claimants set forth above constitute the only employees affected by the contractual violation. As a result and in the context of the special circumstances of the present dispute, the named Claimants shall be compensated in accordance with the requested relief set forth above on the four dates substantiated in the record.

The record omits any persuasive evidence that any other violations occurred on any other dates or involved any other individuals.

AWARD:

The Claim is sustained in accordance with the Opinion of the Board. The Carrier shall make the Award effective on or before

30 days following the date of this Award.


Robert L. Douglas
Chairman and Neutral Member


Donald D. Bartholomay
Employee Member


Patricia A. Madden
Carrier Member

Dated: February 19, 1989