

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 18
Case No. 18

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

CSX Transportation, Inc. (formerly the Chesapeake and
Ohio Railway Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned outside forces (R. J. Corman) to perform Maintenance of Way and Structures Department work (mow and clean the right of way, general maintenance and installation of rail and ties) on the Cabin Creek Subdivision near Cabin Creek, West Virginia beginning August 15, 1994 and continuing [System File C-TC-5883/12 (95-0013) COS].

2. The Agreement was further violated when the Carrier failed to give the General Chairman advance written notice of its intent to contract out said work or discuss the matter in conference in good faith prior to contracting out said work as required by the October 24, 1957 Letter of Agreement (Appendix "B").

3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant A. B. Shelton shall be compensated " . . . for 10 hours a day for each day at Class A Operator rate of 14.43, account the aforementioned rules violation as well as this loss of work opportunity."

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:

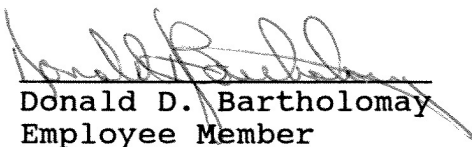
The record indicates that outside forces performed scope covered work. As an affirmative defense, the Carrier asserted that a lease existed for the applicable property; that the Carrier therefore lacked control over the property; and that the Carrier lacked any responsibility to the Organization or the employees represented by the Organization for the activities of the outside forces. Although the Organization requested a copy of the lease during the handling of the dispute on the property, the Carrier--for whatever reason--failed to produce a copy of the lease to the Organization in a timely manner. Under these circumstances the Carrier failed to prove its affirmative defense. The Organization therefore proved that a violation of the scope clause of the Agreement had occurred and that the Carrier had failed to provide the requisite advance notice to the Organization.


With respect to the appropriate remedy for the violations and in the absence of a bona fide affirmative defense, the Carrier shall compensate the Claimant--who was available and qualified to perform the disputed work--for the lost work opportunities as set forth in the claim.

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, 1999