

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 24
Case No. 24

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 (Painters Plus) to perform Bridge and Structures Group [painted three (3) yard shanties in the Wyoming Yards area, the Grand Rapids Diesel House Stalls and the Yard Office in the East Tower] during the weeks of October 24, 31 and November 7, 1994 [System File C-TC-9834/12 (95-0027) CON].
2. The Agreement was further violated when the Carrier failed to give the General Chairman advance written notice of its intent to contract out the work referred to in Part (1) above 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 "F").
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Messrs. L. Carr and J. Lindholm shall each be compensated, at their respective rates of pay, for an equal proportionate share of the five hundred six (506) hours expended by the outside forces in the performance of the work in question.

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 the Department of Transportation of the State of Michigan conducted an inspection of certain parts of the Wyoming Yards on March 3, 1994. As a result of the findings during the inspection, the Carrier decided to have the disputed painting performed. In doing so, the Carrier arranged for the disputed work to be performed by outside forces.

As an affirmative defense, the Carrier asserted that the Claimants were fully employed, under pay, and therefore unavailable to perform the disputed work. The Carrier therefore maintained that no violation of the Agreement had occurred.

Under the present facts set forth in the record, the disputed work of painting constitutes work within the meaning of the scope provision of the Agreement. The alleged unavailability of members of the bargaining unit does not alter the scope provision of the Agreement.

A careful review of the record substantiates that the Carrier failed to provide advance notice to the Organization. The failure to provide such advance notice of work within the scope of the Agreement precluded the parties from discussing possible alternatives to address the Carrier's needs in the context of the requirements of the Agreement and the interests of the members of the bargaining unit. The Carrier violated the Agreement by failing to provide such notice to the Organization concerning the Carrier's intent to contract out the disputed work.


Furthermore, the Carrier's failure to provide the required advance notice further undermines the Carrier's position because such a discussion might have produced an agreement between the parties that met their respective needs. The Organization therefore proved that the Carrier violated the Agreement by using the outside forces without providing advance notice to the Organization.

With respect to a remedy, however, the Carrier provided sufficient evidence in the record to prove that the Claimants would receive a windfall if they were to receive any monetary compensation under the extenuating circumstances present in the instant case. The record proves that the Claimants were fully employed at the time of the violation of the Agreement and did not suffer any cognizable loss under the special circumstances of the present dispute, which involved work mandated by government representatives. As a result, no monetary remedy shall be awarded in this particular situation.


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