

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 105
Case No. 105

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 an outside concern (Midway Railroad Construction Co.) to perform Maintenance of Way work (ditching and grading) from Mile Post 0.0 to Mile Post 7 on the Gauley Branch on January 30, 31, February 1, 2, 7, 8, 9, 10 and 11, 1995 [System File C-TC-5960/12(95-0498) COS].
2. The Agreement was further violated when the Carrier failed to give the General Chairman proper advance written notice of its intent to contract 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, Class A Roadway Machine Operators A. W. Nutter and J. Mize shall each be allowed seventy (70) hours' pay at their respective rates and thirty-eight (38) hours' pay at their respective time and one-half rates and shall each be credited these days toward vacation and retirement benefits.

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:

A careful review of the record indicates that the Carrier provided advance notice to the Organization concerning the plan to use outside forces to perform the disputed work. The letter, dated January 4, 1995, provided:

This is to advise you of the necessity to contract with Midway Railroad Construction, Co., for the cleaning of culverts, ditching and shape roadbed at M.P. CAY 1.5 to CAY 7.0, Gawley, West Virginia, C&O Business Unit.

We have no alternative to contracting this work due to the fact that we do not have sufficient forces with skills necessary to perform the work in question.

This work will begin on or about January 20, 1995 and it is anticipated to be completed on or about March 5, 1995.

A thorough analysis of the particularly precise contents of this letter reveals that the Carrier had decided to utilize outside forces to perform the disputed work before meeting with the representatives of the Organization. As a result, the Carrier deprived the Organization of a reasonable opportunity to address the alleged needs of the Carrier prior to the Carrier actually deciding whether to use outside forces. The record omits any hint, implication, or suggestion that any type of emergency existed for the work to be performed at the particular time set forth in the letter. In addition, the letter omits any reference to a lack of equipment by the Carrier. Thus the Carrier failed to provide the appropriate advance notice to the Organization in this instance and failed to provide any reasonable explanation or justification for failing to provide such appropriate advance notice.

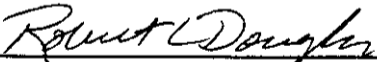
The disputed work unquestionably constituted scope covered work. The record fails to demonstrate that the Carrier lacked qualified employees to perform the disputed work. In particular, Claimant Mize's letter, dated February 11, 1995, remains unrebutted insofar as Claimant Mize indicated that "a CSX grade-all and crew installing culverts in this area." Under all of these circumstances, the Carrier violated the applicable provisions of the Agreement.

With respect to a remedy, the record reflects that Claimant Mize attended training on one of the relevant dates. As a result, the

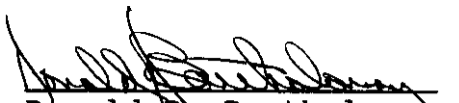
Claim shall be reduced to reflect his unavailability on one of the relevant dates.

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



Mark D. Selbert
Carrier Member

Dated: 5/14/01