

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 118
Case No. 118

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

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

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when, without providing a notice as required by Appendix F, the Carrier assigned an outside concern (Contractor Pat Knapp) to plow snow at the Roundhouse parking lot and the roads to the gas tanks from Holland, Michigan to Michigan City, Indiana and Holland to Grand Junction, Michigan on December 10, 11, 1997 and January 23, 1998 [System File C-TC-2859/12(98-0674) CON].
2. As a consequence of the afore-stated violations, Machine Operator C. Gillan shall now be allowed twenty-four (24) hours of pay at his straight time 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:

The record indicates that the Carrier failed to provide advance written notice to the Organization of the Carrier's intent to use

outside forces to perform the disputed work of plowing snow, which employees represented by the Organization routinely had performed in the past.

The record fails to prove that an emergency situation existed that actually eliminated, precluded, or prevented the Carrier from providing any advance notice to the Organization and that permitted the Carrier to use the outside forces to perform the disputed work.

When the Carrier decides to engage an outside contractor in a snow situation and fails to provide any advance notice to the Organization, the Carrier has an extra burden to set forth in the record specific information to substantiate why the existing employee involved in the dispute (the Claimant) also could not have performed the disputed work and why the Carrier failed to provide any notice to the Organization. In the present case, the Carrier failed to provide such detailed evidence.

Specifically, the Division Engineer, C. E. Martin, provided a letter, dated April 9, 1998, during the subsequent handling of the Claim on the property. The letter indicated, in pertinent part, that:

The clearing of snow is not exclusive to M of W and has been performed by other crafts as well as contractors in the past, particularly when it pertains to parking lots and roadways. During heavy snow, the Carrier frequently must rely on contracted assistance to clear parking lots and roads in a timely fashion while Carrier Forces are engaged in other snow fighting activities such as cleaning switches and/or lighting burners.

(Employee's Exhibit A-2 and Carrier's Exhibit C.)

In contrast, the record also contains evidence that suggests that members of the bargaining unit had performed such work in the past. (Employee's Exhibit A-3 and Carrier Exhibit D.)

Under these highly unusual circumstances in which significant conflicting information exists about the needs of the Carrier and the understanding of the members of the bargaining unit about the perceived practice in the area, the Carrier had an extra responsibility to provide some advance notice to the Organization to candidly, clearly, and explicitly inform the Organization about the operational circumstances at the actual time of the incident (December 10 and 11, 1997 and January 23, 1998) that precluded the Claimant from performing the disputed work as the members of the bargaining unit apparently had done in the past and that therefore required the Carrier to engage an outside

concern.

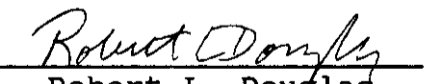
Of special importance in the present matter, the record omits any indication that the Carrier had provided to the Organization at the time of the disputed events in December 1997 and in January 1998 the type of detailed and relevant information disclosed by the Division Engineer during the handling of the Claim on the property on April 9, 1998. The record omits any probative evidence that the Carrier made any effort to provide such information at the time of the incident and also omits any probative evidence to explain why the Carrier failed to do so or could not do so.

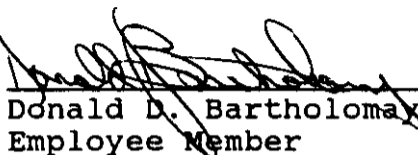
The fact that the Claimant may have performed other work related to removing snow did not absolve, excuse, or relieve the Carrier from the obligation to provide such minimal notice to the Organization at or about the time of the incident to inform the Organization of the situation. Insofar as the Carrier failed to meet its affirmative duty to make a reasonable and good faith effort to provide such notice or to explain why the circumstances may have prevented such notice, a violation perforce occurred.

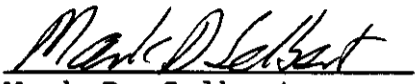
Under the special and highly unusual circumstances of the present dispute, the preponderance of the evidence substantiates the claim of the Organization.

AWARD:

The Claim is sustained in accordance with the Opinion of the Board. The Carrier shall make the Award effective on or before 60 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: 8/15/01