

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 128

Case No. 128

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 (Alabama State Highway Department) to perform Bridge and Building Subdepartment work of constructing a retaining wall on the Carrier's right of way near Bangor, Alabama at Mile Post 355.1 on the Birmingham Seniority District on August 12, 13 and 14, 1998 [System File 34(31)(98)/12(99-51) LNR].
2. The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper advance written notice of its intention to contract out said work as required by Article IV of the 1968 National Agreement and failed to make a good-faith effort to reduce the incidence of contracting out scope covered work and increase the use of its Maintenance of Way forces as required by the December 11, 1981 Letter of Understanding.
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants J. S. Hood, R. H. Tyler, Jr., D. A. Shannon, III and J. L. Holloway shall each be paid eight (8) hours for each date listed above, at their respective straight time rates of pay.

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:

Article IV, Contracting Out, provides:

In the event a carrier plans to contract out work within the scope of the applicable schedule agreement, the carrier shall notify the General Chairman of the organization involved in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than 15 days prior thereto.

If the General Chairman, or his representative, requests a meeting to discuss the matters relating to the said contracting transaction, the designated representative of the carrier shall promptly meet with him for that purpose. Said carrier and organization representatives shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached the carrier may nevertheless proceed with said contracting, and the organization may file and progress claims in connection therewith.

The record indicates that the State of Alabama originated, initiated, and implemented the idea to perform the disputed work in connection with the widening of a road. As a result, a need arose to provide additional fill. Such circumstances generated a further need to increase the height of the referenced retaining wall.

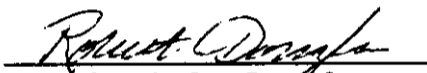
A careful review of the record confirms that the State of Alabama performed the construction project without any involvement, participation, or control by the Carrier. The Carrier merely provided flagging protection in connection with the performance of the disputed work.

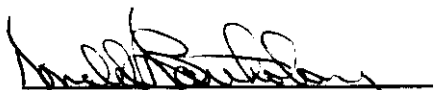
Under these precise circumstances, the Carrier did not have a

duty to provide advance notice to the Organization about the performance of the disputed work. As a result, no basis exists to sustain the Claim.

AWARD:

The Claim is denied in accordance with the Opinion of the Board.


Robert L. Douglas
Chairman and Neutral Member


Donald D. Bartholomay
Employee Member


Mark D. Selbert
Carrier Member

Dated: 9-6-01