

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 134
Case No. 134

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

CSX Transportation, Inc. (former Toledo Terminal
Railroad Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned an outside contractor to perform Maintenance of Way work (install roadway signs at road crossings) beginning February 26, 1999 and continuing [System File I081205699/12(99-0555) TTR].

2. The Agreement was further violated when the Carrier failed to provide advance written notice to the General Chairman prior to contracting the work as required by Rule 41.

2. As a consequence of the violations referred to in Parts (1) and/or (2) above, B&B Mechanics M. A. Weaver, D. B. Gurzynski, R. L. Hagemann, T. J. Agoston and L. J. Dannenberger shall now each be allowed an equal proportionate share of the four hundred fifty (450) man-hours expended by the outside contractor in the performance of the aforesaid work.

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:

The initial claim letter covers work beginning on February 26, 1999. (Employee's Exhibit A-1.) The Organization also provided an unsigned statement that reflects that the disputed work had been completed by the beginning of February 1999.

In particular, the Vice Chairman, F. N. Simpson, sent a letter, dated February 25, 2000, to the Director of Employee Relations, J. H. Wilson, that included the unsigned statement. The unsigned statement indicated, in pertinent part, that:

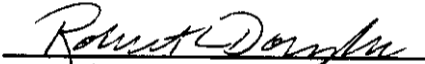
Work was done by begining [sic] of February.

(Carrier's Exhibit F-1 and F-2.)

An ongoing and irreconcilable factual dispute about the time of the alleged violation therefore remains as an essential, material, and relevant part of the record. More specifically, the claim letter alleges that the disputed work began on February 26, 1999 whereas the unsigned letter furnished by the Organization asserts that the disputed work had ended by the beginning of February. As a result of this unusual and continuing significant factual dispute in the record involving this matter, no basis exists to resolve the disagreement between the parties.


AWARD:

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


Robert L. Douglas
Chairman and Neutral Member


D. D. Bartholomay
Employee Member

Dated: 3/8/02


Mark D. Selbert
Carrier Member