

SPECIAL BOARD OF ADJUSTMENT NO. 1110

Award No. 32  
Case No. 32

PARTIES TO THE DISPUTE:

BROTHERHOOD OF MAINTENANCE 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 Carrier violated the Agreement when it assigned or allowed employees of the City of Montgomery to perform Maintenance of Way work (removing ballast and crossties from the Carrier's property) in Montgomery Yard at Montgomery, Alabama on March 27, 28, 29, 30, 31, April 3, 4, 5, 6 and 7, 1995 [System File 18(8)(95)/12(95-0826) INR].

2. The Carrier further violated the Agreement when it failed to give the General Chairman fifteen (15) days' advance written notice of its intent to contract out said work as required by Article IV of the May 17, 1969 National Agreement and the December 11, 1981 Letter of Agreement.

3. As consequence of the violations referred to in Parts (1) and/or (2) above, Foreman E.T. Holder and Machine Operators D.R. Hayes, J.L. McMeans, J.B. Floyd, D.W. Cobb and D.E. Peters shall each be allowed eighty (80) hours' pay at their respective straight time rates.

FINDINGS:

This Board, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and Employees involved 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.

3. That the Carrier asserts that it donated dirt, used ballast and crossties on an "as is, where is" basis to the City of Montgomery. The Carrier points out that the Organization initially claimed that the Carrier entered into some type of agreement with the City of Montgomery and failed to notify the Organization of its intent to contract out the removal work. The Carrier argues that the two positions indicate a conflict in the facts of the dispute and asserts that it is beyond the Board's jurisdiction to resolve factual conflicts.

4. The Carrier contends that the Organization has failed to meet the necessary burden of proof. The Carrier points out that it donated the scrap material to the City of Montgomery. The Carrier asserts that, contrary to the Organization's argument, no Rules in the Agreement bar the Carrier from donating its property to outside concerns; and the Scope rule does not preserve the removal of scrap material to Organization employees.

5. The Carrier argues that once it relinquished control of the material and the City commenced removing same, the property no longer belonged to the Carrier. The Carrier asserts that its action cannot be considered contracting out as alleged by the Organization. Citing authority, the Carrier contends that the Board has consistently upheld the right of the Carrier to sell or donate its property; the removal of that property by an outside party does not constitute "contracting out".

6. The Carrier further asserts that Claimants were neither available for additional work nor deprived of any loss of earnings. The Carrier contends that during the two (2) weeks in question, all of the Claimants were regularly assigned and under pay. As such, the Carrier contends, Claimants were unavailable to perform the work in question. Citing authority, the Carrier argues the Board has long held that an employee must be available for work to be considered eligible before filing a claim to an assignment. The


Carrier further argues that in the event it could be held that the Agreement was violated, Claimants have no valid claim for payment as the Board has held that to award such payments would be imposing a penalty upon the Carrier and giving the employees a windfall.

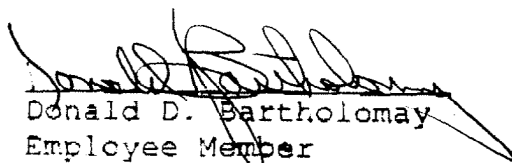
7. The Organization contends that the undisputed facts are that six (6) employees of an outside contractor for the City of Montgomery, Alabama were assigned or otherwise permitted by the Carrier to perform the routine Maintenance of Way work of removing ties, dirt, ballast and to smooth an area within the Carrier's Montgomery yard on the dates in question. The Organization contends that it is also undisputed that the outside forces were performed this work while working in conjunction with the Carrier's section forces. The Organization asserts that the Carrier failed and refused to provide the Organization with advance written notice of its intention to farm said work out. For these reasons, the Organization argues that the Carrier violated the contracting out provisions of the Agreement.

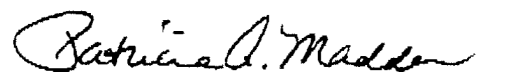
8. The Organization asserts that Claimants were "fully qualified, willing and available to perform all of the work involved in this dispute and would have done so had the Carrier assigned them thereto". The Organization further contends that the Carrier had excess machines idle and BMW employees on furlough from the seniority district during the claim period.

AWARD:

The Claim is sustained in accordance with the Opinion of the Board. Claimants, Foreman E.T. Holder and Machine Operators D.R. Hayes, J.L. McMeans, J.B. Floyd, D.W. Cobb and D.E. Peters, shall each be allowed eighty (80) hours' pay at their respective straight time rates, less a set-off for amounts earned for work actually performed during the claim dates.

  
E. William Hockenberry  
Chairman and Neutral Member

  
Donald D. Bartholomay  
Employee Member

  
Patricia A. Madden  
Carrier Member

Dated: APR 20 1999