

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 39
Case No. 39

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and

CSX Transportation, Inc. (Former Seaboard System
Railroad)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it assigned or otherwise permitted outside forces to perform Maintenance of Way work (rebuild a trestle) at Mile Post S-463.3 on the Columbia Subdivision of the Florence/Savannah Seniority District beginning May 9, 1994 and continuing [System File EMS-94-102/12(95-0369) SSY].

2. As a consequence of the aforesaid violation, the Maintenance of Way employees* listed below shall each be allowed pay at the bridgeman's rate for an equal proportionate share of the total number of man-hours expended by the outside forces in the performance of the work in question beginning May 9, 1994 and continuing.

*E.M. Smith
W.A. Bradham
D.F. Pack
T.C.. Fitzgibbon
R.E. Flatt
W. Wilson
J.A. Cooper
G.W. Moore
E.J. Sabb
E.H. Golden

E.L. White
M.N. Adkins, Jr.
F.J. Reese
F. Matthews
S.L. Kelly
E.H. Pringle
G.H. Wilker
A.M. Calister
H. Kennedy

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 record indicates that the Organization submitted a claim in a July 7, 1994 letter and that the Carrier declined the claim in a September 2, 1994 letter. The Organization initially asserted in an April 13, 1995 letter that the Carrier had failed to respond to the Organization's July 7, 1994 letter. In a June 6, 1995 letter, the Carrier informed the Organization about the September 2, 1994 letter declining the claim. The Organization submitted further correspondence, dated February 26, 1996, and failed to refute the Carrier's reference to and reliance on the September 2, 1994 letter declining the claim. The Organization therefore abandoned any objection to the timeliness of the Carrier's declination of the claim.

Rule 40, Section 1(b) of the Agreement provides, in pertinent part, that:

(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employees as to other similar claims or grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the 60-day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose.

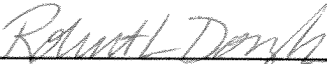
The record indicates that the Carrier declined the claim in a September 2, 1994 letter. The Organization next addressed the claim in an April 13, 1995 letter. The Organization therefore did not comply with Rule 40, Section 1(b) because the appeal by the Organization on April 13, 1995 occurred more than 60 days after the notice of disallowance by the Carrier on September 2, 1994. As a result, the Organization's claim is not timely.

In this regard the record omits any evidence that the parties had agreed to extend the 60-day period for appealing the claim. Thus the determination that the Organization's claim is not timely

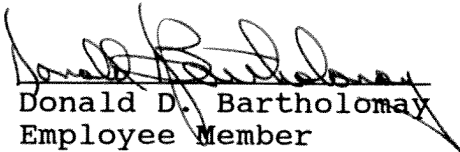
must remain in effect. Consistent with the provisions of Rule 40, Section 1(b), the rights of the parties are reserved to the extent that the present finding may not be considered as a precedent or a waiver of the contentions of the employees as to other similar claims or grievances.

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



Patricia A. Madden
Carrier Member

Dated: October 6, 1999