

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 62
Case No. 62

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and

CSX Transportation, Inc. (former Baltimore
and Ohio 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 (Dave Yurkovic & Sons, Inc.) to perform Maintenance of Way work (dismantle and remove tracks) at the Glenwood Yards between Mile Posts 323 and 325, Pittsburgh West Seniority District from April 28 through June 4, 1997 [System File B-TC-1416)/12(97-2425) BOR].

2. As a consequence of the violation referred to in Part (1) above, furloughed employe P. R. Larson shall be compensated '...for 224 hours at Class "A" Machine Operator rate of pay, plus any overtime the contractor made, plus credited with days for vacation qualification, credited with days for the Feb. 7 guarantee, credited with the months of April, May and June, 1997 for retirement and all other benefits, account of the aforementioned rule violations.

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:

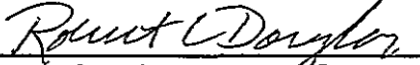
The record indicates that outside forces performed the disputed work. The Carrier relied on an alleged bill of sale as an affirmative defense to the Organization's assertion that the Claimants should have received the assignment.

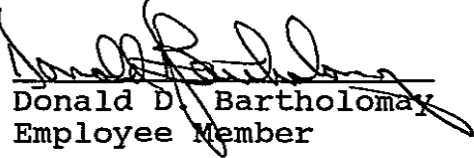
The record includes the referenced Sales Order, which had an effective date of May 1, 1997 and which covered the relevant location. The terms of the Sales Order explicitly referred to scrap and surplus equipment/material and essentially constituted an "as is, where is" transaction. The Organization recognized this transaction in a letter dated July 9, 1998 in which the Organization specifically acknowledged that the Bill of Sale "clearly shows that the Carrier had already sold the material prior to the work being performed." (Employes' Exhibit A-7.)

As a result of the evidence set forth in the record, the Organization failed to prove that the Carrier had violated the Agreement by using outside forces to perform the disputed work.

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: Nov. 2, 2000