

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 67
Case No. 67

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and
CSX Transportation, Inc.

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned outside forces (Progress Rail Services) to perform Maintenance of Way work of loading plates, anchors and spikes along the right of way between Mile Posts SE 363.5 to 368.2 in South Carolina, on November 14, 15, 16, 21, 22 and 23, 1997. [System File 21(18)(98)/12(98-0048) CSX].
2. The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intent to contract out said work in accordance with Article IV of the May 17, 1968 National Agreement.
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants J. Hartsfield and R. S. Swafford shall each be allowed sixty (60) hours' pay at their respective time and one-half 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:

The record indicates that the parties entered a Letter Agreement on September 28, 1993 that updated an arbitrated agreement between the parties concerning the establishment of System Production Gangs to perform production work former property lines or seniority districts.

The Agreement contains detailed provisions concerning the establishment of rosters, bulletining and filling positions, filling vacancies, filling vacancies pending bulletining and assignment, the form of bulletin, the work week, overtime, lodging, meal allowance, work site reporting, travel allowance and travel advance, national agreements, rates of pay, special rule concerning holidays, claims and grievances, emergency conditions, vacation credits, seniority, work force stabilization, an oversight committee, a non-discrimination clause, labor protection, and the duration of the Agreement.

The preamble of the Agreement provides, in pertinent part, that:

For the purposes of this agreement, production work that may be performed by a SPG, is confined to the following work activities: tie installation and surfacing, surfacing, and rail installation. This definition, however, does not limit the Carrier's right to utilize non-SPG gangs to perform these work activities nor does it limit the Carrier's right to propose and reach mutual agreement that other production work be performed by SPG's in the future.

A careful review of the Agreement reveals that an annual process occurs to award the positions on the System Production Gangs. As part of the bulletining and awarding of such positions, the Carrier identifies the seniority districts over which the System Production Gangs are programmed to work.

Section 5 of the Agreement, which the parties amended on September 28, 1993, specifies:

The bulletins advertising SPG positions will identify a proposed schedule of the work to be performed by the particular SPG, and the territory and seniority districts over which the work is programmed.

Section 7 of the Agreement provides:

B. The right to work overtime, when required on System Gangs, will accrue

first to the incumbent of the position of which the overtime is required. If declined by the incumbent, overtime will be performed by the senior qualified employee in the System Gang indicating a desire to work overtime. If no employee desires to work overtime and overtime is required, the junior qualified employee in the System Gang involved will work the overtime.

Rule 1 (Scope) of the former Seaboard Coast Line Railroad Agreement specifies:

These Rules cover the hours of service, wages and working conditions for all employees of the Maintenance of Way and Structures Department as listed by Subdepartments in Rule 5 - Seniority Groups and Ranks, and other employees who may subsequently be employed in said Department, represented by Brotherhood of Maintenance of Way Employees.

This Agreement shall not apply to:
Supervisory forces above the rank of foremen,
clerical employees and Signal and
Communication Department employees.

Rule 2 (Contracting) provides:

This Agreement requires that all maintenance work in the Maintenance of Way and Structures Department is to be performed by employees subject to this Agreement except it is recognized that, in specific instances, certain work that is to be performed requires special skills not possessed by the employees and the use of special equipment not owned by or available to the Carrier. In such instances, the Chief Engineering Officer and General Chairman will confer and reach an understanding setting forth the conditions under which the work will be performed.

It is further understood and agreed that although it is not the intention of the Company to contract construction work in the Maintenance of Way and Structures Department when Company forces and equipment are adequate and available, it is recognized that under certain circumstances, contracting of such work may be necessary. In such instances, the Chief Engineering Officer and the General Chairman will confer and reach an understanding setting forth the conditions under which the work will be performed. In such instances,

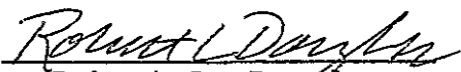
consideration will be given by the Chief Engineering Officer and the General Chairman to performing by contract the grading, drainage and certain other Structures Department work of magnitude or requiring special skills not possessed by the employees, and the use of special equipment not owned by or available to the Carrier and to performing track work and other Structures Department work with Company forces.

The record indicates that the Carrier permitted outside forces to perform the disputed work on the rest days of the Claimants and that the Carrier failed to provide advance notice to the Organization. The Carrier asserted an affirmative defense that Progress Rail Services had purchased certain property from the Carrier on an "as-is, where-is" basis and merely had retrieved the property. The Carrier therefore sought to prove that the disputed work did not constitute scope work belonging to the Claimants and did not require any advance notice from the Carrier to the Organization.


The record omits any documentary evidence that the Carrier provided the relevant documents to the Organization to substantiate the Carrier's affirmative defense. Under these precise circumstances, the Carrier had an affirmative obligation to furnish the relevant documents to the Organization after the Organization had so requested. As a result of the Carrier's unexplained failure to do so, the Carrier failed to prove its affirmative defense. The Organization therefore provided sufficient credible evidence to prove its claim.

AWARD:

The Claim is sustained in accordance with the Opinion of the Board. The Carrier shall make the Award effective on or before 30 days following the date of this Award.


Robert L. Douglas
Chairman and Neutral Member


Donald D. Bartholomew
Employee Member


Mark D. Selbert
Carrier Member

Dated: Nov. 2, 2000