

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 76

Case No. 76

PARTIES TO DISPUTE:

Brotherhood of Maintenance of 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 Agreement was violated when the Carrier assigned an outside concern (Dillard Construction) to remove snow and salt access roads and parking lots at Radnor Yard, Nashville, Tennessee on February 1 and 2, 1996 [System File 13(7)(96)/12(96-0691) LNR].
2. The Agreement was further violated when the Carrier failed to notify the General Chairman 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, furloughed Dump Truck Operator C. L. Anderson and Backhoe Operator D. B. Pewitt shall each be allowed sixteen (16) hours of 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 the Employee involved in this dispute are, respectively, Carrier and Employee 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 Carrier failed to provide advance written notice to the Organization of the Carrier's intent to use outside forces to perform the disputed work, which employees represented by the Organization routinely perform.

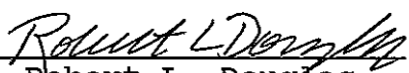
The record fails to prove that an emergency situation existed that eliminated the need for any advance written notice and that permitted the Carrier to use the outside forces to perform the disputed work. Specifically, the record indicates that the Carrier had the necessary equipment to perform the disputed work.

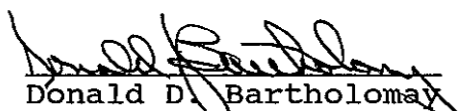
The record further reveals that the Carrier had a reasonable likelihood of contacting the Claimants, who had the necessary skills to perform the disputed work. The record omits any probative evidence whatsoever that the Carrier made any effort to do so. In addition, the mere fact that Claimant Pewitt had taken a vacation day on Friday, January 31, 1996 and that Claimant Anderson was on furlough did not relieve the Carrier of the duty to make a reasonable and good faith effort to contact them to determine their availability to perform the disputed work.

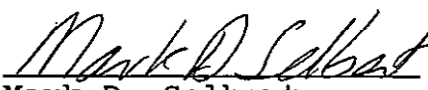
Under the special circumstances of the present dispute, the preponderance of the evidence substantiates the claim of the Organization.

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. Bartholomay
Employee Member


Mark D. Selbert
Carrier Member

Dated: 11-2-00