

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 95
Case No. 95

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

CSX Transportation, Inc. (former Chesapeake
and Ohio Railway Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned outside forces (Progressive Railroading) to perform Maintenance of Way work (tear out track, stock pile materials and distribute same) and [sic] Mile Post 11.7, Lundale Two Mine on the Buffalo Subdivision beginning April 20, 1996 and continuing [System File C-TC-6368)/12(96-1188) COS].
2. As a consequence of the violation referred to in Part (1) above, furloughed employees T. Rakes, R. Rakes, D. Green, D. Shelton and D. Hatfield shall each be allowed eight (8) hours' pay at the trackman's straight time rate and two (2) hours' pay at the trackman's time and one-half rate for each day the outside forces performed the work in question beginning April 20, 1996 and continuing until the violation ceased.

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 Carrier complied with the requirement to provide advance written notice to the Organization about the intent to use outside forces. Specifically, the record substantiates that the Carrier provided the appropriate notice to the Organization before the performance of the disputed work began. In addition, the record reflects that the parties discussed the matter in a timely manner.

Rule 83 concerns contract work and provides, in pertinent part, that:

(b) It is understood and agreed that maintenance work coming under the provisions of this agreement and which has heretofore customarily been performed by employees of the railway company, will not be let to contract if the railway company has available the necessary employees to do the work at the time the project is started, or can secure the necessary employees for doing the work by recalling cut-off employees holding seniority under this agreement.

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

The record includes the referenced Construction Contract, which had a date of October 12, 1995. The Contract provided, in relevant part, described the work to be performed by the Contractor:

Removal of rail, ties, and OTM from various locations in Gauley Yard and Number 2 Mine Tracks, Lundale, West Virginia. Proposal "A", is accepted, CSXT retain items 1-A, 1-C, 2-B, 2-C and 2-E. Contractor retain remainder of material.

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2. Lundale, West Virginia (#2 Mine tracks)
 - A. Remove est. 21664 L.F. 130# rail.
 - B. Remove est. 8592 L.F. 131/132# rail.
 - C. Remove 7 - 132# turnouts.
 - D. Remove remainder track material & OTM.
 - E. Remove 6000 relay ties, including

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- all switch ties.
F. Remove remaining ties.

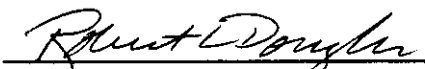
The Construction Contract by its very nature reflects that the Carrier retained control of the relevant location and the material located at the relevant location. As a result, the work to be performed at the location constituted scope covered work to the extent that the Carrier ultimately retained any of the material. In contrast, the material that the outside contractor purchased and removed from the Carrier's property did not implicate scope covered work.

Under these circumstances the Carrier violated the Agreement with respect to those portions of the Construction Contract in which the Carrier retained the specific items (2-B, 2-C, and 2-E). The Carrier did not violate the Agreement with respect to those portions of the Construction Contract in which the Contractor used outside forces to remove the items that the Contractor had purchased from the Carrier, namely, items 2-A, 2-D, and 2-F.


Consistent with certain cited precedent, the parties shall meet to determine the proportion of the work relating to items 2-B, 2-C, and 2-E of the Construction Contract. The Claim shall be modified to cover the hours of work needed to perform such work and the Claimants shall be compensated at their straight-time rate of pay for this portion of the work that the outside forces performed pursuant to the Construction Contract.

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: 5/14/01