

Award No. 18288
Docket No. MW-18715

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
SEABOARD COAST LINE RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when, without an understanding having been reached between the Assistant Vice President, Engineering and Maintenance of Way and General Chairman, as required by Rule 2, it assigned the work of constructing 2,100 feet of track and installing one (1) turnout between Dickerson and Oxford, North Carolina to outside forces. (System File 12-2/C-4.)

(2) The members* of Extra Force No. 8564, Raleigh Division each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man hours expended by outside forces in performing the work referred to within Part (1) of this claim.

(*) R. A. Martin, Foreman
J. E. Gilchrist, Cook
C. Green, Trackman
C. E. Peterson, Trackman
W. D. Sanders, Trackman
J. E. Spruill, Trackman
W. Bluford, Trackman
C. Grant, Trackman
G. N. Spruill, Trackman
G. R. Owens, Trackman
C. J. Moody, Trackman
W. A. Blount, Trackman
C. L. Vincent, Trackman
A. Miles, Trackman

EMPLOYES' STATEMENT OF FACTS: The claimants are the Foreman and members of Extra Force 8564 on the Raleigh Division.

sary. This particular project would, as outlined above, certainly come under the exception contemplated by the rule. As you know, Rule 2 was brought forward intact into the current agreement from the former Atlantic Coast Line agreement and proper recognition was historically given on that Carrier to the wording and intent of the rule. It was properly interpreted as permitting the contracting of work under certain circumstances and conditions and your protestations to the contrary do not change the interpretation and application thereof as you are contending. In this connection you are referred to Third Division Award 11790.

There was no violation of the agreement and no justification or support for the penalty claim filed and appealed by you. Therefore, it is declined."

NOTE: The contract referred to above between Seaboard Coast Line, the City of Oxford and the North Carolina State Highway Commission, as well as the two letters referred to from the North Carolina Highway Commission, are reproduced and attached as Carrier's Exhibit A.

This claim was discussed in conference October 21, 1969, along with some other claims, as confirmed by letter of Carrier's highest designated officer dated November 28, 1969, in which he advised the General Chairman, "you did not present anything new in support of these claims and you were advised we saw no reason for changing our decisions in these cases."

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute involves the same parties, Agreement Rule and pivotal issues as in Award No. 18287. For reasons stated in that Award we will sustain the Claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November, 1970.

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