



Award Number 17607

Docket Number MW-17347

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerry L. Goodman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

TERMINAL RAILWAY ALABAMA STATE DOCKS
(An Agency of the State of Alabama)

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

- (1) The Carrier violated the Agreement when it assigned or otherwise permitted an individual outside the scope of the Agreement to perform the work of cleaning track and right-of-way (picking up pulpwood).
- (2) The senior Section Laborer be allowed pay at his pro rata rate for an equal number of man hours as was consumed in the performance of the work referred to within Part (1) of the claim.

EMPLOYES' STATEMENT OF FACTS: The work of cleaning track (picking up pulpwood that has fallen from trains and has become scattered along the tracks) has historically and traditionally been assigned to and performed by employees of the Maintenance of Way Department. The pulpwood thus salvaged was sold by the Carrier. On July 18, 1966, the Carrier discontinued this practice and thereafter an outsider, who holds no seniority with the Maintenance of Way Department, was assigned or permitted to perform this work. The Carrier has alleged that the outsider receives only the salvageable pulpwood as pay for the performance of this work.

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated July 1, 1963, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: The Carrier is a Class S-3 switching railroad. The Carrier is not affiliated with any other railroad.

The Carrier is owned and operated by the State of Alabama. The Carrier serves the Alabama State Docks Department, an Agency of the State of Alabama, and several industries located near the facilities of the Alabama State Docks Department.

EXHIBIT E:

A conference on this appeal was held on the Carrier's property February 8, 1967. A summary of this conference is contained in a letter from General Manager Scott to Mr. McGlaughlin, dated March 3, 1967.

EXHIBIT F:

On May 11, 1967, General Chairman McGlaughlin addressed a letter to General Manager Scott which read:

"Reference is made to claim in behalf of senior Section Laborer account of contracting performing clean-up work. I plan to be in Mobile Wednesday morning, May 17, at which time I would like to conclude the handling of this claim on the property. I am suggesting to Mr. Daniels that we confer with him at 9:00 A.M. on the above date and would like to see you when our discussions are finished."

A conference was held on the Carrier's property on May 17, 1967, with Superintendent Daniels, Administrative Assistant Scott A. Marshall, and E. V. Tanner representing General Manager Scott.

EXHIBIT G:

This claim was again denied, and the denial made earlier by General Manager Scott was confirmed in a letter from Administrative Assistant Scott Marshall to Mr. McGlaughlin dated May 18, 1967.

(Exhibits not reproduced)

OPINION OF BOARD: The Organization claims Carrier has violated the Scope Rule of the parties' Agreement by permitting an independent contractor to perform the work of cleaning the rails and right of way of pulpwood. Carrier defends on the grounds that the independent contractor is engaged in the work of salvaging the pulpwood and that the past practice of the parties has been to exclude such salvage work from the scope of the Agreement.

The record indicates that since October 29, 1963, Carrier has had an agreement with an independent contractor whereby the latter is granted a license to come on Carrier's property for the purpose of salvaging and removing ". . . beans and/or other commodities as may be designated by a representative of the . . . railway . . ."

The record further shows that pursuant to the foregoing agreement beans and scrap iron have been salvaged for some time.

The existence of this agreement and the history of the performance under it persuades us that the practice of the parties has been to exclude the work of salvaging commodities such as pulpwood from the scope of their collective bargaining agreement.

We hold, therefore, that the work of salvaging pulpwood does not accrue to the Organization under the Scope Rule of the Agreement herein.

Consequently, the claim is denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1969.