Award No. 18249
Docket No. MW-18614

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE BELT RAILWAY COMPANY OF CHICAGO

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

(1) The Carrier violated the Agreement, when it assigned the performance of track maintenance work on Sections A, C, D and E to outside forces.

(2) Each of the employes assigned to Section Gangs A, C, D and E be allowed pay at their respective straight time rates of pay for an equal proportionate share of the total number of man hours expended by outside forces in the performance of the track maintenance work referred to in Part (1) of this claim since August 15, 1968.

EMPLOYES' STATEMENT OF FACTS: The claimants, all of whom hold seniority within the Carrier's Track Department, are the foremen and members of Section Gangs A, C, D and E. Track forces have traditionally performed all work in connection with building and maintaining the Carrier's tracks.

In this case, the Carrier assigned the performance of routine track maintenance work to C. N. Vilas Company. This work consisted of cleaning track, removing sand, weeds, etc. and was performed by six (6) men who hold no seniority whatsoever within the Maintenance of Way and Structures Department. The claimants were available and would have willingly performed this work if the Carrier had so desired.

The assignment of this track work to outside forces was in violation of the scope rule which reads in pertinent part:

"The rules contained herein shall govern the hours of service and working conditions of the following employes in the Maistenance of Way and Structures Department.

TRACK DEPARTMENT:

Section and Extra Gang Foremen

Assistant Section and Extra Gang Foremen

As suggested by us, we discussed this claim on February 19, 1969, at which time the general chairman would not or could not present any basis for the claim. We confirmed the conference on March 14, 1969, as follows:

"Mr. Nicholas Caputo, General Chairman
Brotherhood of Maintenance of Way Employes
5253 S. Kenneth Avenue
Chicago, Illinois 60632

Dear Mr. Caputo:

This will confirm our conference discussion of the claim submitted by you because employes of the C. N. Vilas Co. allegedly performed maintenance of way work for unspecified periods during the trainmen's strike.

I explained to you during the discussion of this case that the work performed by these employes was not work exclusive to employes covered by the Maintenance of Way Agreement and secondly, that each and every employe who desired to work during this period of time was worked and there was work to be performed that other employes represented by you could have performed if they reported for work.

My declination dated February 14, 1969 was affirmed.

Yours truly,

/s/ C. M. Crawford
Dir. of Personnel"

The next thing we heard about this claim was nine months later, when on November 14, 1969 we received a copy of Mr. Crotty's letter dated November 13, 1969 to the Board that he "intends" to file the dispute with your Board. In paragraph (2) of the notice of intent to file, the union gives as a starting date of this claim August 15, 1968, which is not the same as the 60 days retroactive date originally presented.

No work as alleged was ever performed by the employes of C. N. Vilas & Company and none at all in cleaning yards on Section C was performed prior to September 1, 1968.

OPINION OF BOARD: On or about September 1, 1968, the Carrier utilized employes of the C. N. Vilas and Company who were regularly employed for the purpose of icing cars and related work, to perform track cleaning work in Carrier's yards. Claim was filed on behalf of Carrier's track department forces, whose traditional and customary duties of maintenance of tracks and roadbed include the cleaning of tracks as here involved.

In view of the conflicting evidence and the failure of both sides to present this Board with competent evidence upon which to render a just decision as to the actual merits, we will render neither a sustaining nor a denial Award, but shall dismiss this claim because of a lack of the requisite body of evidence essential for a sound adjudication of the basic issues.