

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19334  
Docket Number MW-19418

Arthur W. Devine, Referee

(Brotherhood of Maintenance of Way Employes

PARTIES TO DISPUTE: (

(Louisville and Nashville Railroad Company

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

(1-a) The Carrier violated the Agreement and Article IV of the National Agreement of May 17, 1968, when, without prior notification to the General Chairman, it assigned the work of spreading weed killer between Etowah and Marietta, Georgia to outside forces (System File 1-5/E-201-5).

(1-b) The Carrier further violated the Agreement when it assigned an assistant division engineer instead of an assistant foreman to provide protection for the outside forces and their equipment.

(2-a) Mr. F. E. McFarland be allowed 16 hours' pay at the truck driver's straight time rate and 6½ hours' pay at the truck driver's time and one-half rate of pay because of the violation referred to in Part (1-a) above.

(2-b) Mr. B. W. Haney be allowed 16 hours' pay at the assistant foreman's straight time rate and 6½ hours' pay at the assistant foreman's time and one-half rate because of the violation referred to in Part (1-b) above.

OPINION OF BOARD: The claim alleges that the Carrier violated Article IV of the National Agreement of May 17, 1968, by contracting the spreading of weed killer without prior notification to the General Chairman.

The Carrier contends that work of the kind involved has been contracted through the years and that the Petitioner has failed to prove an exclusive right to the work.

The Scope Rule of the applicable agreement reads:

"Subject to the exceptions in Rule 2, the rules contained herein shall govern the hours of service, working conditions, and rates of pay for all employes in any and all sub-departments of the Maintenance of Way and Structures Department, represented by the Brotherhood of Maintenance of Way Employes, and such employes shall perform all work in the maintenance of way and structures department."

Rule 2(f) set forth the conditions under which work may be contracted. However, in the handling of the dispute on the property no issue was joined as to the application of Rule 2(f).

So far as Article IV of the May 17, 1968 Agreement is concerned, it is well settled that the exclusivity doctrine has no application. See Awards Nos. 18305, 18306, 18860, 18867, 18773, 18714, 18716, 18968, 19056, 19153, 19154, and 19191. See also recent Award 19158 involving the application of the Scope Rule of the Agreement here involved and Rule 2(f) thereof.

We will follow the prior awards of the Division heretofore cited in finding that the Carrier violated Article IV of the National Agreement of May 17, 1968, in failing to notify the General Chairman of its intention to contract the work. However, as it has not been shown that anyone suffered any monetary loss by reason of the actual contracting of the work, we will also follow the prior awards and deny claim for monetary payments as result of the contracting without prior notice to the General Chairman.

We do find, however, that the Carrier violated the Agreement in assigning an Assistant Division Engineer, an employee not covered by the Agreement to work with the contractor in the securing of line-ups, etc.

Parts (1-a), (1-b) and (2-b) of the claim will be sustained; part (2-a) will be denied.

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 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 violated to the extent shown in Opinion.

A W A R D

Part (1-a) of claim sustained; Part (1-b) of claim sustained; Part (2-a) of claim denied, Part (2-b) of claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*E. A. Killen*  
Executive Secretary

Dated at Chicago, Illinois, this 14th day of July 1972.