

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **20851**
Docket Number MW-20825

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employee
(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 a conference having been held between the Assistant Vice President, Engineering and Maintenance of Way and the General Chairman **as** required by **Rule 2**, it contracted out the work of disposing of old **cross** tie butts between Mile Post A-83 and Mile Post A-86: **and** between Mile Post A-120 and Mile Post A-135 **/System** File **12-2 (73-2)/**.

(2) Foremen E. G. Williams, Jr., L. J. Hedgepeth, D. I. **Denton**; Apprentice Foremen A. C. **Nelms**, T. G. Williams; Machine operators W. **Williams**, R. L. London; **Crankhand C. Frazier**; **Trackmen** K. York, W. Robinson, E. J. Price, W. Green, B. A. **Wactor**, L. **Hinton**, A. Small, S. C. **Mooring**, J. L. Banks, W. **Glover**, J. D. Turner and E. Wilson each be allowed pay at their respective straight time rate for an equal proportionate share of the total **number** of man hours **consumed** in performing the work referred to in Part (1) hereof.

OPINION OF BOARD: When Carrier contracted for disposal of certain old cross tie butts, Claimants alleged a violation of **Rule 2**. That rule provides that maintenance and construction work under the Agreement **may** be performed by individuals other than employees subject to the Agreement, only if the Assistant Vice President, Engineering and Maintenance of **Way** and the General Chairman confer and reach agreement on the conditions.

The Organization urges that the **work** of disposing of old ties is maintenance work which its employees have performed by history and custom; and Carrier violated the Agreement when it failed to confer with (and reach **understanding** with) the General Chairman.

The Carrier is careful to draw certain distinctions in this dispute. Carrier concedes that the employees have been involved in disposal of cross ties and tie pieces within the limits of the railroad's right of way. But, Carrier insists that its action complained of herein was merely a removal of solid waste, and that it has customarily and historically disposed of such waste in any manner available to it off of the right of way.

Awards cited by the Organization have sustained **claims concerning** labor performed on the right of way - having found that the work in question in those cases was covered by the Agreement, and had been performed thereunder. But here, the Carrier's distinction appears to be well taken. The applicable rule speaks in terms of "maintenance" and "**construction.**" Without regard for the argument concerning the "exclusivity" doctrine, in order to sustain this claim, we would require a stronger showing than presented by this record that the employees have, by history and custom, performed the work of waste disposal. For example, concerning the question of giving away old ties, Claimants argue that Carrier has not demonstrated that the employees did not pile or group the ties for disposal la the prior instances. That may be so, but there is no showing that this claim is limited to that type of work performance. To be sure, there were two (2) instances when a Carrier Official conferred with the Organization regarding this type of work. Rut the record, as a whole, suggests that those **instances were** isolated, and not indicative of **customary** practice.

We certainly do not dismiss, out of hand, or minimize the Organization's contentions in this case. The rule is a strong guarantee of work **perservation.** We do feel, however, that in order to activate the rule, a showing must be made that the work is of a nature contemplated by the rule. **While** the type of work here In dispute may fall within that category, we are not disposed to conclude that the **Organization** made such a showing while the matter was under consideration on the property. Thus, we will dismiss the claim for failure of proof.

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 claim is dismissed for failure of proof.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOAW
By Order of Third Division

ATTEST:

A.W. Paulson
Executive Secretary

Dated at Chicago, **Illinois**, this 24th day of October 1975.