

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21794
Docket Number ~~M~~-21754

Robert W. Smedley, Referee

PARTIES TO DISPUTE: [Brotherhood of Maintenance of Way **Employees**
(The Chesapeake and Ohio Railway Company
(Southern Region))

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

(1) The Carrier violated the Agreement when it assigned outside forces to transfer lading at Russell, Kentucky on March 25 and 26, 1975 (System File **C-TC-198/MG-1421**).

(2) Section Foreman W. M. Keeton and the members of his gang (Section Force **1100**) on the claim dates each be allowed fifteen and **one-half (15-1/2)** hours of pay at their respective rates because of the aforesaid violation.

OPINION OF BOARD: The facts are not in dispute. Claimants worked transferring box car loads starting 7:00 a.m., March 25, 1975. Part of the crew was called off to a **derailment** at **11:00** a.m. The other part went to the same derailment **at** 3:00 p.m., when contract forces were brought in to finish the job. The outside force worked some **15½** hours, until **6:30** a.m. on March 26. Furloughed **trackmen** were available to do the unloading and loading. The claim is that they should have been called rather than the contract forces.

RULE 1 - SCOPE

"(a) These rules govern the hours of service and working conditions of all employees in the Maintenance of Way and Structures **Department**, including pumpers, **highway** crossing watchmen and **gatemen, targetmen** at noninterlocked railroad crossings, employees at **Barboursville** Reclamation Plant, and laborers employed in the **T. & T. Department**, but not including those employed in a **supervisory** capacity of higher rank than general **foreman**, superseding all previous rules."

RULE 66 - CLASSIFICATION

"(a) Proper classification of employees and a reasonable definition of the work to be done by each class for which just and reasonable wages are to be paid is necessary but shall not unduly impose uneconomical conditions upon the Railway. Classification of employees and classification of work, as has been established in the past, is recognized.

"(b) In carrying out the principles of Paragraph (a), section and extra gangs will perform work to which they are entitled under the rules of this agreement in connection with the construction, maintenance, and/or removal of roadway and track facilities, such as rail laying; tie renewals (except on bridges and structures, but this will not preclude section and extra forces from laying rail or doing other track work on bridges or structures); ballasting; lining and surfacing track; installing, maintaining, and removing frogs and switches, including crossing frogs, (except welding or other work done on frogs and switches by blacksmiths); ditching and roadbed work not performed by employees operating roadway machines under the roadway machine operator classification; mowing and cleaning right of way (except such cleaning of snow, ice, sand and other materials as signal employees may do in connection with signal and interlocker facilities), patrolling and watching track where bridges or structures are not involved; operating Mole ballast cleaners and other roadway and track work in connection therewith; installing and maintaining drain pipes where the work does not require structural work or the skill of B & B carpenters; and similar work heretofore assigned to track employees."

RULE 83 - CONTRACT WORK

"(b) It is understood and agreed that maintenance work coming under the provisions of this agreement and which has heretofore customarily been performed by employees of the railway company, will not be let to contract if the railway company has available

"the necessary employees to do the work at ~~the~~ time the project is started, or can secure the necessary employees for doing the work by recalling cut-off employees holding seniority under this agreement."

The Rule 83 words "maintenance work coming under the provisions of this agreement" lead us to Rule 66. The list of duties assigned to ~~track~~ employees does not include loading and unloading box cars or any "similar" work. Thus, we turn to the word "customarily" in Rule 83. The evidence is that ~~trackmen~~ have done a lot of load transferring over the years, but clerical, shop craft and outside forces have also done such work. The Union argues that "customarily" does not require a showing that ~~the~~ job was exclusively theirs. We disagree.

Awards 20633 and 20338 (both by Lieberman) illustrate the controlling factors in this case. There vehicle repair work was contracted out in direct violation of repairmen's specifically reserved contract rights. No such specific reservation appears in Rule 66, Rule 1 or elsewhere in the agreement for these claimants. ~~More~~ in line are Awards No. 21456 (~~Randles~~) and 21438 (~~McBrearty~~), holding that ~~system-~~wide exclusivity must be shown and the burden of proof is on the Union to so prove.

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

The agreement ~~was~~ not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 18th day of November 1977.

