

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22591
Docket Number MW-22428

George S. Roukis, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employes**
(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 Resident, Engineering and **Maintenance** of Way and the General Chairman as required by Rule 2, it assigned work of the Maintenance of Way and Structures Department at Castle **Hayne**, North Carolina to outside forces on May 25 and 26, 1976 [System File 12-2(76-37) C2]

(2) Because of the aforesaid violation, Mr. L. Moore be allowed the difference between what he should have received at the Group A, Class III Machine operator's rate and what he was paid at the **trackman's** rate for sixteen (16) hours."

OPINION OF BOARD: In this case, there is no dispute regarding the type of work performed at the highway crossing located at Castle **Hayne**, North Carolina. The disagreement centers around the question whether the work belonged to the Maintenance of Way forces.

Claimant contends that Carrier violated Agreement Rule 2 when it permitted the North Carolina State **Highway** Department to use a state owned front end loader - backhoe and operator to remove old pavement, ballast, flange boards and crossties and to replace ballast at this grade crossing. He asserts that Carrier unilaterally assigned this work to outside forces without properly **observing Rule 2's** specified provisions. This **Rule** which is quoted in pertinent part hereinafter reads,

"This Agreement requires that all maintenance work in the Maintenance of Way and Structures Department is to be performed by employees subject to this Agreement

"except it is recognized that, in specific instances, certain work that is to be performed requires special **skills not** possessed by the employees and the use of special equipment not owned by or available to the **Carrier**. In such instances, the Assistant Vice-Resident, Engineering and Maintenance of Way, and the General Chairman will confer and reach an understanding setting forth the conditions under which the work will be performed."

Carrier, on the other hand, argues that the contested work was traditionally performed by the State Highway Department and reflects the **normal** division-of labor between the Maintenance of Way forces and the **government** when they cooperatively participated in similar assignments. In essence, the Highway Department performed the highway portion of the work, while the Maintenance of Way forces performed the trackwork. Moreover, Carrier contends that **Rule 2** is inapplicable in the present circumstances since the work was not in the literal sense of the term a compensatory contracting out **arrangement**.

In our review of the case, we **agree** with Carrier that the work was not contracted out within the traditional meaning of the term. The work was **performed** at the Commonwealth's expense in conjunction with the Maintenance of Way forces. A careful reading of Rule 2 reveals that it is **purposely** designed **to insure and** protect that **all** maintenance work will be performed by **the** Maintenance of Way forces, except that in clearly specified circumstances where special skills or equipment are unavailable, a **conferral** procedure is required.

In this situation there were no assertions that these conditions were present. Carrier argued that the work belonged to the State Highway **Department** and was not contracted out. In Third Division Award 22274, involving the same parties, this Division held that the Chamber of Commerce's utilization of volunteer prison labor to paint a rail depot was not beyond the bounds of this provision if it affected protected work. This decisional rationale is applicable herein. The test is the protection of work **not** the payment for outside services.

Carrier performed road clearance work that included the removal of ballast, flange boards and crossties, etc. It was done at the point where the public highway crossed Carrier's track. Admittedly, the rehabilitative work was a jointly determined task, but its nature and location was fraught with potential conflict.

It is this **gray** area that is in contention.

Carrier, to be sure, performed road clearance work that **was** an integral part of its highway maintenance responsibility, but when the task specifics and location are carefully examined, we find that the work belonged to the Maintenance of Way forces. We recognize, of course, that a fine line oftentimes exists in disputes of this type, but the work did not require **specialized** skills or **equipment**. It was traditionally **performed** by Maintenance of Way forces and encompassed methods and machinery that were protected by Agreement language. We will sustain the claim.

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 **Employes** involved in this dispute are respectively Carrier and Employes 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.

A W A R D

claim sustained.

NATIONALRAILROAD **ADJUSTMENT BOARD**
By Order of Third Division

ATTEST:



Executive Secretary

Dated at Chicago, Illinois, this **30th** day of October **1979**.