NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22917
THIRD DIVISION Docket Number MW-22903

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 President, 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 between Jakin, Georgia and Saffold, Georgia to outside forces October 9 through October 11, 1977 /System File 37-SCL-77-29/12-2 (78-5) J2/.

(2) Because of the aforesaid violation, Track Sub-department employes H. W. Benton, T. McClyde, J. McCree, C. Mays and H. Davis each be allowed pay at the applicable machine operator's rate for an equal proportionate share of the sixteen (16) man-hours expended by outside forces."

OPINION OF BOARD: The basic facts in this case are undisputed. Claimants contend that Carrier violated Agreement Rule 2 when it assigned outside forces to perform work in connection with a grade crossing renewal between Jakin and Saffold, Georgia, while Carrier contends that the equipment used in such work, a rubber tire backhoe front-loader and required operator was obtained on a "leased" basis which was not subject to the Rule's conferral requirements. The pertinent part of this Rule provides that:

"RULE 2

CONTRACTING

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-President, 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."

In our review of this case, we concur with Claimants that Rule 2 was violated. Close reading of this Rule does not reveal any interpretative distinctions that exclude by definition the leasing of equipment. The work performed belonged to Maintenance of Way forces and it was incumbent upon the Carrier to confer with the General Chairman. Carrier's assertion that it was not restricted by Agreement Rules as to the methodology and source of obtaining this equipment is a peripheral argument. It did not have this equipment readily available at the time it was needed to perform the aforementioned tasks and thus it was leased from the Lloyd Crews Construction Company. Under such conditions and the important correlative fact that it was used to perform Maintenance of Way work required conferral observance. To avoid this responsibility by asserting that leasing is not a form of contracting is plainly impermissible. Rule 2 was intended to require as a condition precedent to contracting out Maintenance of Way work that the Assistant Vice President, Engineering and Maintenance of Way and the General Chairman confer and reach an understanding setting forth the conditions under which the work will be performed. It is clear, simple and unambiguous language and directly applicable to the facts herein. In prior Third Division cases involving the same parties, albeit different fact situations, we have held in conceptually analogous disputes that conferral was a necessary requirement. We find that it was required here. (See for example, Third Division Awards 22591, 22274 and 18287). Carrier violated Rule 2 when it didn't confer with the Chairman regarding the leasing of said equipment and we are compelled to sustain the first part of the claim.

On the other hand, we agree with Carrier that one of the Claimants was already compensated at the higher rate of pay for operating the machine and that no other payment was required or justified by the Agreement. We will thus reject this portion of the claim consistent with our finding and direct Carrier to observe the procedural requirement of this Rule.

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 to the extent expressed herein.

A W A R D

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of July 1980.