

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24853
Docket Number MW-25005

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Atchison, Topeka and Santa Fe Railway Company

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

(1) The Carrier violated the Agreement when it assigned outside forces to construct one and one-half (1-1/2) miles of barbed wire fence between Mile Post 340 and Mile Post 342 in the vicinity of Mulhall, Oklahoma on September 10, 11 and 12, 1980 (System File 80-400.A8-8012/11-1940-20-138).

(2) Because of the aforesaid violation, Maintenance of Way Employees K. L. Ferguson, M. M. Manning, S. W. Hunsaker, D. W. Reaves, R. E. Nida, L. D. Kime, J. Rodriguez, R. W. Bray and M. R. Harrell each be allowed pay at their respective straight time rates for an equal proportionate share of the forty-eight (48) man-hours expended by outside forces.

OPINION OF BOARD: The Carrier contracted for construction of a barbed wire fence one and one-half miles long between M.P. 340 and 342 in its Oklahoma District. The work was performed by two of the contractors personnel on September 10, 11 and 12, 1980.

The Agreement between the Organization and the Carrier provides in part in Appendix No. 8, Article IV:

"In the event a carrier plans to contract out work within the scope of the applicable schedule agreement, the carrier shall notify the General Chairman of the organization involved in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than 15 days prior thereto."

On August 12, 1980 the Carrier wrote the General Chairman of the Organization stating:

"Referring to our telephone conversation of August 6, 1980, concerning Carrier's desire to contract for the building of a mile and one-half long barbed wire fence between M.P. 340 and 342, Oklahoma District (Old Oklahoma Seniority District) near Mulhall, Oklahoma.

In the aforementioned telephone conversation you advised me you do not concur in the contracting of this work, and I notified you, pursuant to the provisions of Appendix No. 8 of the current Agreement, that the Carrier intends to contract for the aforementioned work.

The Organization claims the contracting out violated the Agreement and that nine named Maintenance of Way Employees should be paid equal proportionate shares at their rate for the hours worked by the outside forces.

In support of its contention that the work is within the scope of the Agreement and customarily performed by employees it represents, the Organization points to Rule 1, Appendix No. 25 of the Agreement which refers to Fence Gang Foreman along with approximately 30 other classifications. It also refers to Rule 2 (Seniority) which mentions Assistant Fence Gang Foreman as well as the Wage Appendix which sets a wage rate for Fence Gang Foremen. Further the Organization claims fence construction has been customarily and historically performed by the Carrier's Fence Gang.

The Carrier denies the work is exclusively reserved to Claimants under any practice, principle or rule. In the handling of this claim on the property it pointed to six instances between March of 1979 and September of 1980 in which it used outside contractors on the Division involved to construct right-of-way fences.

In Organization's view, the work at issue is clearly encompassed within the scope of the references contained in Rule 1 and Rule 2 and therefore no proof of practice is necessary.

In agreement with the Carrier this Board finds the references in Rule 1 and Rule 2 to be entirely general in nature. Numerous Third Division Awards have held that when the rule relied upon is general it is Organization's burden to establish that employees it represents have performed the work historically and exclusively on a systemwide basis.

There is no evidence to establish historic exclusivity here. The evidence of record on that point is to the contrary.

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 not violated.

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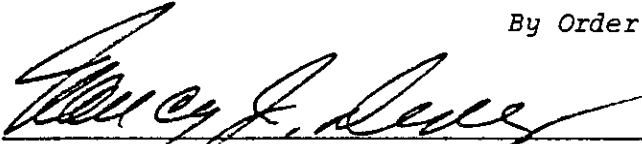
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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1984