

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25276

Docket Number MW-24802

Rodney E. Dennis, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(The Colorado **and** Southern Railway Company

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

(1) The Carrier violated the Agreement when, without prior notification to the General Chairman, it assigned the work of picking up scrap material beginning May 8, 1981 to outside forces (System File C-17-81/MW-443).

(2) Machine Operator J. L. Santistevan and the senior furloughed **trackman** each be allowed pay at their respective rates for an equal proportionate share of the total number of man-hours expended by outside forces in performing the work referred to in Part (1) hereof.

OPINION OF BOARD: Between May 11 and June 4, 1981, Carrier employed an outside Contractor with a Bantam Crane to pick up scrap material on its property at Des Moines; New Mexico. The crane could not be rented without an operator. Carrier's Burro Crane was out of service and in the shop for major repairs. On July 6, 1981, a claim was filed by **Trackman Santistevan and** the most senior furloughed **Trackman** for a proportionate share of the man hours expended. Carrier states that 134 of the worked hours were performed by the Contractor and compensated by Carrier.

Petitioner contends that Carrier violated Rule 3(b) of the Controlling Agreement, which, in pertinent part, reads as follows:

"Contracting 1b): Employees included within the scope of this agreement in the Maintenance of Way and Structures Department perform work in connection with the construction, maintenance or repairs of, and in connection with the dismantling of tracks, structures or facilities located on the right of way and used in the operation of the Company in the performance of common carrier service.

Work as described in the preceding paragraph may not be contracted to outside parties, except by agreement with the Brotherhood, unless special skills not possessed by company employees, special equipment not owned by the company, or special material available only when applied or installed **through** supplier, are required; or unless work is such that the Company is not adequately equipped to handle the work; **or**, time requirements must be met which are beyond the capabilities of company forces to meet.

"In the event the company plans to contract out work because of one of the criteria described herein, it shall notify the General Chairman of the Organization in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than fifteen (15) days prior thereon, except in 'emergency time requirements' cases. If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the Company shall promptly meet with him for that purpose. The Company and the Brotherhood representative shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached, the Company may nevertheless proceed with said contracting and the Brotherhood may file and progress claims in connection therewith."

Petitioner maintains that Carrier contracted out work customarily and traditionally performed by Maintenance of Way employees and failed to properly notify the General Chairman of the need to subcontract. By these actions, it denied the General Chairman an opportunity to discuss the work to be done and did not allow him an opportunity to attempt to persuade Carrier to perform the work with Carrier forces.

Carrier contends that the work of picking up scrap on Carrier property is not, by Scope Rule, custom, or practice, reserved exclusively to Maintenance of Way employees. Therefore, there was no requirement to notify the General Chairman of the pending subcontract.

This Board has carefully reviewed the record of this case and the lead Awards submitted by each side. We are compelled by this record and the cases presented to conclude that Petitioner has not, by the smallest amount of probative evidence, demonstrated that picking up scrap on Carrier property is work reserved to it by Agreement, custom, or practice. Given the failure of Petitioner to demonstrate that the work contracted out was its work, we will dismiss the claim for lack 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 Agreement was not violated.

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Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1985.