

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26032

Docket Number MW-26014

Marty E. Zusman, Referee

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

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 as required by Rule 83(c) (October 24, 1957 Letter of Agreement) it assigned outside forces to perform weed eradication work along tracks and around buildings in the vicinity of the Barboursville Reclamation Plant on April 28, 1983 (System File C-C-1825/MG-4145).

2. Because of the aforesaid violation, furloughed Laborers T. Townsend, D. L. Cook, K. D. Dolen, J. Jarrett, W. J. Collins and R. J. Wall shall each be allowed eight (8) hours of pay at their respective rates."

OPINION OF BOARD: This Board is asked to rule on a Time Claim asserting that Carrier contracted out work without agreed Letter of Intent. Within this dispute on the failure of Carrier to utilize furloughed Maintenance of Way Laborers are additional time limit contentions as well as disputes over excessive Claim and improper Claimants.

We have reviewed the record as developed on property and fail to find evidence of a probative nature to support the assertion of a Carrier violation. In the instant case, the weed control work was performed on April 28, 1983, by an outside contractor. Assertions that such work has traditionally and historically been performed by Laborers does not meet the Petitioner's burden of proof. No evidence of record establishes that such work herein disputed either belongs to the employees, or has ever been performed by Maintenance of Way Laborers.

Finding no evidence to support the Organization's alleged Agreement violation, this Board denies the Claim. All other issues raised by the parties to this dispute on the property are herein considered of no further consequence by the Ruling.

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

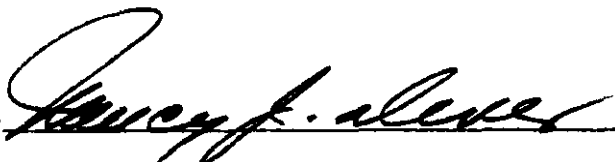
That the Agreement was not violated.

A W A R D

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 May 1986.

