

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26082
Docket Number MW-25902

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Southern Pacific Transportation Company (Eastern Lines)

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

(1) The Agreement was violated when outside forces were assigned and/or permitted to perform sub-grade work in connection with a grade crossing project between Houston and Hempstead, Texas, August 1 through August 5, 1983 (System File MW-83-111/402-73-A).

(2) The Carrier also violated Article 36 when it did not give the General Chairman advance written notice of its intention to contract said work.

(3) As a consequence of the aforesaid violations, Machine Operators W. N. Lastor, R. F. Berckenhoff and W. C. Drews shall each be allowed forty (40) hours of pay at their respective straight time rates and ten (10) hours of pay at their respective time and one-half rates."

OPINION OF BOARD: It is the Organization's position that Carrier violated the Controlling Agreement, particularly Articles 1, 2, 17 and 21 when Contractor forces were employed by R. D. Parker, Inc. of Richmond, Texas, to construct sub-grade and install drainage pipes for a grade crossing near Fern, Texas, at Mile Post 18.68. Said work was performed between August 1, 1983, and August 5, 1983. The Organization also asserts that Carrier violated Rule 36, by its failure to notify the General Chairman, in writing, of its (Carrier) intention to contract out the work. The Organization avers that work of the character performed by the outside forces contractually accrues to employees holding seniority in the Roadway Machine Department.

Carrier argues that the work performed by the Contractor was done under contract between R. D. Parker, Inc. and Harris County. Specifically, it asserts that it had not planned to contract out such work and had no record of this Contractor working for Southern Pacific during the time noted in the Claim. It contends that the work was performed solely at the insistence of Harris County and was strictly for the benefit of the concerned Government. It further disputes the Organization's contention that said work belonged to covered employees, arguing instead, that the Organization has failed to demonstrate Agreement protection.

In reviewing this case, the Board concurs with Carrier's position. Our decisional law on this issue compels this determination. We find no evidence that Carrier instigated or retained sufficient control over the disputed work, nor evidence that it was performed at Carrier's expense or exclusively for its benefit. We have analyzed the benchmark cases referenced by both parties, but find Third Division Award Nos. 23422 and 24078 more pertinent to the basic questions posed. Unlike the fact situations in Third Division Award No. 22274, cited by the Organization where the involved Carrier granted permission to the Chamber of Commerce of Kissimmee, Florida, to use volunteer labor to paint a depot at the Kissimmee situs, Carrier in this instance did not grant such permission. It did not engage in contracting out work as that concept is contemplated within the meaning of the Scope Rule and it lacked control over the actions of Harris County.

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.

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 31st day of July 1986.