

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26225
Docket Number MW-26076

Gil Vernon, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(Seaboard System Railroad

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

(1) The Carrier violated the Agreement when on August 17, 18, 19, 24 and 31 and September 1, 1982, it assigned other than Track Subdepartment forces to perform the work of cutting right-of-way (trees and other vegetation) between Mile Post S553.3 and **Mile Post** S578 on the Everett Subdivision, Savannah Division [System File **C-4-(36)-SF5508**].

(2) Because of the aforesaid violation, each **employee** assigned to Section Force 5508, on the claim dates, shall be allowed pay at their **respective** rates for an **equal** proportionate share of the ninety-six (96) man-hours expended **by** the **Communication** and Signal Department **Employees** in performing the **work** referred to in Part (1) hereof."

OPINION OF BOARD: The Claim before the Board was initiated by the General Chairman on October 12, 1982. In the Claim letter to the Division **Engineer**, it was asserted that the Carrier violated the **Agreement** when it assigned to Signal Department **employees** the cutting and clearing of trees and other vegetation along the Carrier's right-of-way. **The Union** also claimed that:

"The Carrier is abundantly aware that the cutting or clearing of its right-of-way is maintenance **work** in its Maintenance of Way and Structures Department that is specifically reserved to its **employees** subject to the Agreement, as set forth in Rule 2. Such work has been traditionally and historically assigned to its employees holding seniority in the Track Subdepartment, Group A, pursuant to the provisions of Rule 5."

The Division Engineer replied that the work was performed in connection with clearing **vegetation** which adversely affected the operation of the **communication** lines and only brush under the lines was **cut**. **Moreover, he asserted** that it had **been** a traditional practice for **Communication employees** to cut or trim trees and/or brush that were interfering with the **communication** systems.

The Claim was appealed to the next level with the Union contending the lines were not actually fouled by the brush and the cutting was merely "preventive maintenance" which was reserved to the Maintenance of Way employees. To this, the Chief Engineering Officer replied that the work was done in response to the fact an FRA Inspector took exception to the vegetation. It was also reiterated that a Maintenance of Way employee assisted the Communication employees on August 17, 18 and 24.

On appeal to the highest level the Union provided a Communication employee statement that the lines were not fouled. To this the Carrier replied and in doing so provided statements from the Supervisor in charge and the Division Engineer. It was stated that the FRA Inspector had in fact taken exception to the brush conditions and that it was an FRA exception when brush could interfere with the lines' operation. Additionally, it was claimed that Communication employees had done this type of work in the past.

Last, it is noted the International Brotherhood of Electrical Workers, which represents the Communication employees, filed a Third Party Submission.

This case rests on the application and interpretation of Rule 2, Section 1 and Rule 1 which read respectively as follows:

"Rule 2 - Section 1

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.

Rule 1

These Rules cover the hours of service, wages and working conditions for all employees of the Maintenance of Way and Structures Department as listed by Subdepartments in Rule 5 - Seniority Groups and Ranks, and other employees who may subsequently be employed in said Department, represented by Brotherhood of Maintenance of Way Employees.

This Agreement shall not apply to: Supervisory forces above the rank of foremen, clerical employees and Signal and Communication Department employees."

As these Rules pertain to these facts, it is well established that in order to prevail the Organization must show that the work in question is reserved to then by historical **custom** and practice.

It is the opinion of the Board that the Organization has failed to show that the specific work in question is reserved to them under the applicable test previously set forth by this and other Divisions. For instance, see Third Division Awards 23852, 21131 and 17003. In fact, the work not only was clearly and primarily related to the maintenance of **communication** lines but there is no basis to conclude **Communication employees** haven't done this work in the past.

FINDINGS: **The** Third Division of the **Adjustment Board**, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 15th day of January 1987.