

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26565
Docket Number MW-26496

Peter R. Meyers, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

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

(1) The Agreement was violated when outside forces were used to repair Lift Truck **V-5063** on December 6, 7, 8, 9 and 12, 1983 (System Docket CR-834).

(2) The Agreement was further violated when the Carrier did not give the General Chairman prior written notification of its plan to assign said work to outside forces.

(3) Because of the aforesaid violations, Repairman A. G. Edgell shall be allowed forty (40) hours of pay at his straight time rate."

OPINION OF BOARD: Claimant is employed as a Repairman by the Carrier at its M.W. Repair Shop in Canton, Ohio. On the dates in question, **Midstate** Industrial Trucks, a "outside company, made repairs on a Clark Lift Truck operated by the **Material** Department at Canton; Claimant worked his regular assignment on these dates. The Organization subsequently submitted a Claim on Claimant's behalf, challenging Carrier's use of outside forces.

This Board has reviewed the record in this case, and we find that the Scope Rule does not specifically include the type of work at issue in this case. The Scope Rule applies to work "generally recognized as maintenance of way work" and includes, specifically, work such as "inspection, construction, repair and maintenance of water facilities, bridges, culverts, buildings and other structures, tracks, fences, and roadbeds" The work at issue here is repairing a lift truck, which is not specifically referred to in the Scope Rule and further, as is made clear in the record, is not generally regarded as Maintenance of Way work. There is evidence that the same type of work has been assigned by the Carrier to outside forces in the past.

This Board has held, on numerous occasions, that if the Scope Rule does not specifically cover the work in dispute, a past practice must be established. (See Third Division Award 25370.) In this case, the Organization has neither identified clear contractual language demonstrating that its members are entitled to the work, nor has it shown by concrete evidence that said work has traditionally been performed by Maintenance of Way **employees**. (See Third Division Awards 26084 and 25276.) Hence, this Board cannot find that there was a violation, and the Claim must be denied.

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

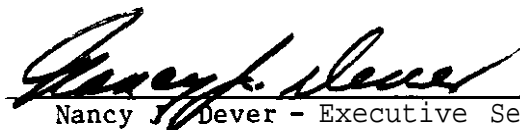
That the Agreement was not violated.

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 30th day of September 1987.