

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26604
Docket Number MW-26228

Gil Vernon, 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 the Carrier assigned outside forces to perform tie handling work on Extra Gang No. 441 between Bremond and Groesbeck, Texas on May 18, 19, 25 and 26, 1983 (System Files MW-83-82/397-49-A and MW-83-77/396-57-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) Track Laborer W. R. Scott shall be allowed forty (40) hours of pay at his straight time rate and Track Laborers J. C. Maxwell and R. G. Duarte shall each be allowed twenty (20) hours of pay at their respective straight time rates because of the violations referred to in Parts (1) and (2) hereof."

OPINION OF BOARD: On May 31, 1983, the Organization initiated the instant Claim on the property. They contended that employees of the J. Tiller Service Company were used to move ties away from the track between Bremond and Groesbeck, Texas.

The Carrier responded on July 25, 1983, flatly denying that J. Tiller Service was contracted to do any work on the property at anytime. It also contended the ties in question were "removed from under the track with a tie pusher and tie crane move ties approximately three to four feet from bal-last for private contractor to pick up."

The initial position of the Parties essentially constituted their contentions to the time of appeal to the Board. The Carrier did, however, raise several additional defenses at the Board which, of course, cannot be considered because they were raised here for the first time.

Based on the record properly before the Board, the Claim must be dismissed. The facts essential to a sustaining claim are sharply disputed and there is no basis in this record to reconcile or resolve the differing factual assertions. This decision is consistent with long standing Board precedent under similar circumstances.

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

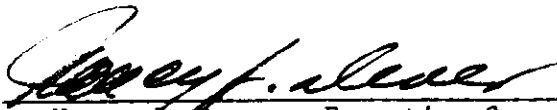
That the Claim must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1987.