

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26676

Docket Number MW-26301

Irwin M. Lieberman, Referee

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

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

1. The Carrier violated the Agreement when it assigned outside forces to clear brush from the right-of-way on the Allegheny 'A' Division July 18, 1983 through November 30, 1983 (System Dockets CR-575 and CR-576).
2. The Carrier also violated the Agreement when it did not give the General Chairman advance written notice of the intention to contract said work.
3. As a consequence of the aforesaid violation, Class 1 Machine Operator D. M. Baker and R. A. Lalli shall each be allowed pay at the Class 1 machine operator's rate for an equal proportionate share of the total number of man-hours expended by outside forces sixty (60) days retroactive from September 29, 1983."

OPINION OF BOARD: On July 14, 1983, Carrier entered into an agreement with an outside contractor to perform certain brush cleaning work on its Allegheny Division. The contract was for a Gradall with a High-rail gear and two operators. The work was begun on August 1, 1983, and was completed on November 11, 1983. Claimants were both furloughed employees in the Allegheny seniority district.

The Organization maintains that the brush cleaning work involved in the contracting has customarily, traditionally and historically been performed by the Carrier's Maintenance of Way forces and furthermore is reserved to those employees under the Scope Rule. Additionally, it is argued that Carrier did not give the Organization's General Chairman advance written notice its intention to contract out the work as required by the Scope Rule.

Carrier insists that the work in question was for the purpose of clearing brush impairing the signal system in the various locations in the Allegheny Division in the vicinity of Olean, New York. The work was supervised by the Assistant Supervisor C & S Department and not by the Maintenance of Way Department. In support of its position that the work in question accrued to the employees of the Signal Department Carrier cites the Scope Rule with the Brotherhood of Railroad Signalmen which states in relevant part:

"Removal of brush or trees that impair the operation of the signal system."

The Organization has produced no evidence appearing in the record of this dispute which supports its contentions that the work in question is the type of work reserved to Maintenance of Way Employees, either by practice or agreement language. The Organization's vigorous argumentation is not a substitute for facts. The Organization has simply not borne its burden of proof in this dispute. The Claims must be denied since on a prima facie basis the work belongs to the Signal forces.

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

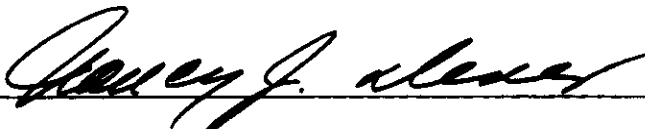
That the Agreement was not violated.

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 23rd day of November 1987.