

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26711
Docket Number MW-26504

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(The Chesapeake and Ohio Railway Company
(Southern Region)

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

(1) The Carrier violated the Agreement when without a conference having been held as required by the October 24, 1957 Letter of Agreement, it assigned outside forces to perform vegetation eradication work at the Barboursville Plant on April 18, 1984 (System File C-TC-2290/MG-4661).

(2) Because of the aforesaid violation, furloughed Laborers C. Patrick and J. Dillon shall each be allowed four (4) hours of pay at their respective straight time rates."

OPINION OF BOARD: A Claim was filed by the General Chairman of the Organization on April 25, 1984, on behalf of the two Claimants on the grounds that the Carrier had violated the Agreement when it permitted a contractor to do certain work in lieu of the Claimants. The Carrier had allegedly used SSI, Inc. of Huntington, West Virginia to apply weed killer at its Barboursville Reclamation Plant on April 18, 1984, rather than the Claimants.

In its denial of the Claim at the final level of appeal the Carrier's Senior Manager of Labor Relations stated the following:

"Our review of this matter discloses that while Maintenance of Way employees on a few occasions have spread some weed control chemicals over small areas, they have not made general applications of this type chemical. Carrier has historically contracted for chemical control of weeds at the Barboursville Reclamation Plant. We note that the application of this type chemical is regulated by the EPA, that the contractor is licensed and no rule of the Agreement specifies that work of this nature would accrue to M/W laborers. Thus, we affirm that the Carrier properly contracted for the control of weeds at Barboursville, Noting that the Carrier has continually contracted for this work and in view of the fact that M/W laborers lack the necessary expertise to do such work, it was not necessary for Carrier to give you notice of contract."

As moving party in the instant dispute the burden of proof lies with the Claimants (Third Division Awards 24508, 26082, 26084). A search of the record fails to produce sufficient substantial evidence to warrant the conclusion that the Carrier was in violation of contract when it permitted an outside contractor to do weed control work at its Barboursville Shop. Further, there is no evidence of probative value to contradict the position of the Carrier that it had used outside contractors for this type of work as a matter of past practice. Past Awards emanating from this Board have held that the jurisdictional right to a type of work, absent Agreement directive, must be based on proof that the work was customarily and traditionally performed by the craft (Third Division Awards 23423, 25276). Both sides do admit that those covered by the Agreement have occasionally engaged in various kinds of minor weed control work for the Carrier. Such occasional work is insufficient, however, to establish exclusive right to such work.

A Claim similar to this one on this property between the same parties was disposed of in 1986 by Third Division Award 26032. The Board has re-studied that Award and it must conclude that the Board's conclusion therein must reasonably serve as precedent for the instant case. On that basis, and on the basis of the evidence of record, the Claim cannot be sustained. Various other issues raised by the parties in their handling of the case on property such as the correct date when the alleged violation took place, and the amount of time consumed by the contractor's employees when the weed control work was done need not be addressed by the Board in view of its decision on the threshold issue.

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 Agreement was not violated.

A W A R D


Claim denied.

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By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1987.