

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(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 cut brush on the Youngstown Branch beginning June 7, 1983 (System Docket CR-796).

(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:

'I am requesting you allow this claim, making continuous payments until this work is stopped, to the following furloughed employees in seniority order since June 7, 1983: B. J. Meredith, Employee Number 253683 at Vehicle Operator Rate of pay \$10.82 per hour; D. L. Standy, Employee Number 250631 and D. R. Pinney, Employee Number 230092 both at Trackman Operator Rate of pay \$9.84 per hour. Also since June 15, 1983 M. A. Fетters, Employee Number 266855 at Trackman Operator Rate of pay \$9.84 per hour.'

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

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Award No. 27014  
Docket No. MW-26642  
88-3-85-3-390

Except as to location and the extent of work involved, this claim closely parallels the claim considered in Third Division Award 27012. The Board reaches the same conclusion as in that Award, which is incorporated herein by reference.


The Board will sustain the claim as stated in Paragraphs (2) and (3) of the claim. With this, it is unnecessary to rule on the contention in Paragraph (1) of the claim.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of April 1988.

CARRIER MEMBERS' DISSENT  
TO  
AWARD NOS. 27012, 27014; DOCKET NOS. MW-26579, MW-26642  
(Referee Marx)

The Majority has committed two grievous errors in the handling of these cases.

First, they have completely overlooked or failed to give any credence to the decision rendered by the Third Division in Award 26676 which involved the same parties, the same agreement and the same dispute, i.e., brush cutting under a signal system. In Award 26676, the Majority correctly denied the Organization's claim, stating:

"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."

In Awards 27012 and 27014, while recognizing that the dispute involved pole line brush cutting and inviting the Brotherhood of Railroad Signalmen as a Third Party, the Majority nevertheless somehow decided that the agreement was violated when the Organization was not given advance notice of the contracting although not finding a violation of the agreement because a contractor was used. An extension of this convoluted decision would require an advance notice to the Organization even when Signalmen are used to cut brush under pole lines, an item of work clearly spelled out in that Agreement.


Certainly, the proper and logical path to follow was that already set by Award 26676. Having gone astray, the Majority has merely muddled the waters by these awards.

Secondly, and more importantly, the Majority has decided a notice is required even if the work involved is not within the scope of the Agreement simply because the represented employees have participated in brush cutting in the past. However, the decision ignores the fact that brush cutting is not mentioned in the Scope Rule. The Majority further overlooks the fact that brush cutting has been performed historically by other crafts and by contractors, throughout the property without prior notice and without any protest.

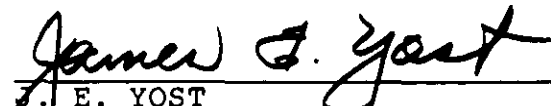
For these reasons, it is necessary that we dissent.

  
R. L. HICKS

  
M. W. FINGERHUT

  
M. C. LESNIK

  
P. V. VARGA

  
J. E. YOST