

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig 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 Carrier's right-of-way at Camden, New Jersey on January 9, 1984 (System Docket CR-842).

(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, furloughed Trackmen W. H. Johnson, D. Wooten, D. Jackson, H. Bowyer and T. L. Hayes shall each be allowed eight (8) hours of pay at their respective straight time rates."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

At the outset, the Board observes that certain arguments were made by the Organization in their Submission to the Board which were not raised on the property. Therefore, these may not be considered in our deliberations at this stage of the appellate process.

The claim as issued was filed by letter dated February 7, 1984. The Organization essentially contends that brush cutting work performed by an outside contractor on January 9, 1984, is contractually reserved to its forces.

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88-3-85-3-320

The employees on the property furnished statements asserting they have performed brush cutting. The Carrier countered by labeling such statements as self-serving, asserting again that the employees had never performed this work exclusively, but did not furnish any specifics as to when and where others may have performed brush cutting in support of an asserted past practice.

We do not, however, find it necessary to explore the question of exclusivity as we are herewith concerned with work that could be within the scope and Carrier's uncontested failure to serve notice. (See Third Division Award 24137)

Under the circumstances, Item 2 of the Statement of Claim is sustained. Item 3 of the Statement of Claim is sustained to the extent each was furloughed on the claim date. We do not rule on Item 1 of the Statement of 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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1988.