

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein 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 Carrier violated the Agreement when it assigned outside forces to repair Welder WE-6022 on or about December 5, 1983 (System Docket CR-872).

(2) The Carrier also violated the Agreement when it did not give the General Chairman advance written notice of its intention to contract out said work.

(3) As a consequence of the aforesaid violations, Repairman A. Edgell shall be allowed two hundred (200) hours of pay at his straight time rate."

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.

Claimant is a Repairman in the Track Department regularly assigned to Carrier's System Maintenance of Way Shop at Canton, Ohio. Beginning on or about December 5, 1983, Carrier contracted with an outside firm, Ragon Electrical Service and Supply, to repair Teleweld Welding Unit WE-6022. The work consisted of dismantling, cleaning and inspecting the unit, replacing bearing, installing a new tire on the coupler, and reassembling and testing the unit. The Organization contends that this work is contractually reserved to Maintenance of Way Repairmen and has customarily and traditionally been performed by them. In addition, the Organization argues that Carrier did not notify the General Chairman, in writing, of its intention to contract out the work in accordance with Paragraphs 2 and 3 of the Scope Rule.

Carrier, on the other hand, submits that the Scope Rule is general in nature and the work of repairing a welding machine is not mentioned therein. By the same token, Carrier asserts the Organization has not shown exclusive performance of the involved work even at the Canton Maintenance of Way Shop, much less on a systemwide basis, and, therefore, the essential proof of systemwide exclusivity is lacking.

The parties have each submitted precedent Awards in support of their respective positions which have been reviewed and considered by this Board. Interestingly, there are two prior cases, both involving the same parties, the same Carrier facility and the same Claimant as this case, but with opposite results. See Third Division Award 26505 and Public Law Board No. 378, Award No. 7.

In each of these disputes the Carrier contended that the contracted item of work is not usually that considered within the Scope of the Maintenance of Way Agreement and that the Maintenance of Way has not exclusively performed that work, but the Organization has referred to a past practice, to seniority and classification of work rules, that one could concede that this work just may be considered as Scope work.

The exclusivity argument may be critical in other disputes such as determining which class or craft may be entitled to perform certain work. Here, however, a different test is applied. The Carrier, under the circumstances herein is obliged to notify the Organization. Whether or not the work here involved would have been eventually contracted out, assigned to another craft or class or assigned to Maintenance of Way employees is not the principle point and indeed need not be resolved here.

Without commenting on the findings in either of the prior Awards, and under the facts and circumstances developed on the property in connection with this dispute, we find that it is unnecessary to rule on Item 1 of the Statement of Claim. Item 2 is sustained and since Claimant was fully employed and suffered no loss of earnings, we will deny Item 3.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1988.