

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Northeast Illinois Regional Commuter Railroad Corporation (former Chicago, Rock Island and Pacific Railroad Company)

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

(1) The Agreement was violated when outside forces were used to handle, load and haul material in connection with dismantling tracks and structures at Blue Island, Illinois August 22, 1984 through September 10, 1984 (System File NIRCRC-0-501/08-3.3-52).

(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, Machine Operator D. Hickerson, Trackmen W. Marshall and C. Marshall and the three (3) senior fur-loughed trackmen shall each be allowed pay at their respective rates for an equal proportionate share of the total number of man-hours expended by outside forces in performing the work referred to in Part (1) hereof."

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.

Between August 22 and September 10, 1984, the Carrier used an outside contractor to load certain material at its Blue Island Yard and transport it off the property for disposal. The Organization contends the work involved the handling, loading, and hauling of ties and building material in connection with the dismantling of tracks and structures at the Blue Island Yard. The Carrier asserts the material removed was rubbish which consisted of a portion of the roundhouse previously demolished by Carrier forces and an accumulation

over the years of scrap ties, debris, and trees. The Organization argues that, notwithstanding the Carrier's description of the material, the work was reserved to members of its Organization under Rule 1, Scope (B), which states, in relevant part:

"Employees included within the scope of this Agreement shall perform all work in connection with the construction, maintenance, repair, and dismantling of tracks, roadbeds, structures, facilities, and appurtenances related thereto, located on the right-of-way or used in the operation of the Carrier in the performance of suburban passenger service."

The Organization insists the phrase "all work in connection with the dismantling of tracks and structures" includes the removing of the resulting debris. Although the Organization has consistently maintained this position, it has offered no evidence to rebut the Carrier's contention the material was partially rubbish and included the removal of trees. On the contrary, the Organization, in responding to the Carrier's contentions on May 20, 1985, pointed out that the "materials, trees and large timbers..." could have been cut up into smaller pieces for handling. Furthermore, the Organization has not rebutted the Carrier's contention that the scrap ties and debris were accumulated in its yard over a period of years. In other words, the Organization has failed to support its claim with any evidence the dismantling of the roundhouse or any track was contemporaneous with the filing of the claim. On the contrary, the record indicates any dismantling functions had long since ceased, and the debris in question had no relationship to the Carrier's ongoing suburban passenger service.

Accordingly, we conclude the Organization has not met its burden of proving by probative evidence that, under the circumstances which existed at the time of the claim, the work of removing the debris was reserved to the Organization by Agreement or past practice. See Third Division Award 25276.

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 29th day of March 1989.