

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(CSX Transportation, Inc.
(Atlanta and West Point Railroad Company)
(Georgia Railroad)

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 between the General Superintendent - Chief Engineer and the General Chairman, as required by Rule 2, it assigned or otherwise permitted the work of cutting (mowing weeds and cutting brush) right-of-way between Mile Post YYG-164.7 and Mile Post YYG-165.8 on the Florence Division beginning December 19, 1985 [System File 37-AWP-GA-86-7/12-2(86-183) I].

(2) Messrs. F. H. Rutherford, G. M. Duvall, S. N. Caviness, B. W. Branyan and T. H. Treadwell shall each be allowed pay at their respective straight time rates for an equal proportionate share of the one hundred ninety-two (192) 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.

The record indicates that beginning December 19, 1985, and continuing for a six day period, Carrier permitted outside forces, namely a contractor, Asplundh Tree Service, to mow weeds and cut brush on one side of the right-of-way for approximately 1.1 miles on the Georgia Subdivision of the Florence Division of the Carrier. At the time, the five Claimants were assigned to a section force in that area. There was no notification to the General Chairman prior to the contracting of the work.

The Organization argues that the contracting of the work was a direct and serious violation of Rule 2 of the Agreement. It is urged that the particular work must be considered general maintenance work, and as such, is strictly reserved by the Rules to employees covered by the Agreement. The Organization insists that the work, contrary to Carrier's contentions, was performed for the benefit of the Carrier.

The Carrier maintains that the work in question was contracted for by the Georgia Power Company in accordance with the Agreement entered into by the Carrier and the Power Company in 1968. That Agreement permitted the Power Company to install, maintain and operate certain power transmission lines on Carrier's right-of-way at Decatur, Georgia. According to Carrier, the Power Company found it necessary to have the right-of-way directly beneath its pole lines cleared of vegetation which endangered the efficient operation of the power line. To correct the problem, the Power Company contracted with the Asplundh Tree Service to remove the undergrowth beneath its power line. The Carrier argued that the Claim did not have merit since the Carrier did not request that the work be done, did not contract for the work and did not compensate the contractor for performing the work. In addition, the Carrier maintains that the work in question did not belong exclusively to the employees represented by the Organization.

There have been a host of Awards throughout the industry in analogous claims, including several on this property. In this case the work in question was not performed for the benefit of Carrier, was not under Carrier's control nor at its expense; the work was contracted for by the Power Company for its primary benefit. The Claim must be denied. See Third Division Awards 26676, 26541, 26487, 26225, 20644, and 20529 among many others.

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 1990.