

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
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(Elgin, Joliet and Eastern Railway Company

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

(1) The Carrier violated the Agreement when it assigned outside forces to perform snow removal work at Waukegan, Illinois on January 1, 1985 (System File SJ-2-85/WM-6-85).

(2) The Carrier also violated Rule 6(c) (Article IV of the May 17, 1968 National Agreement) when it did not give the General Chairman advance written notice of its intention to contract said work.

(3) As a consequence of the aforesaid violations, furloughed Truck Driver K. L. DeCamp shall be allowed eight (8) hours of pay at the truck driver's time and one-half 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 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.

The Claimant holds seniority as a truck driver within the Scales and Work Equipment Sub-Department. On the date this dispute arose, he was on furlough status because of force reduction.

The Organization alleges, and Carrier does not dispute, that S & K Enterprises, an outside contractor, was hired to perform snow-removal work at the Waukegan Yard on January 1, 1985. The Organization maintains that a truck equipped with a snow plow attachment was used for eight hours to remove snow from the roadways and parking lots at the Yard on that date.

It is the Organization's position that Carrier violated Paragraphs (a) and (f) of Rule 4 -- Scales and Work Equipment Sub-Department, as well as Rule 6 -- Contracting Out Work, when it engaged an outside concern to perform the disputed work. Rule 4(a), which defines the work of employees of the Scales and Work Equipment Sub-Department, including Truck Drivers, reads in relevant part as follows:

"... the operation of Maintenance of Way Department highway trucks and buses only which are used exclusively for the transportation of material and/or the transportation of employees of the Maintenance of Way Department shall be the work of the Scales and Work Equipment Sub-Department."

Rule 4 provides:

"Truck Drivers' work shall include only the operation of such trucks and buses as are included in Rule 4 (a) above ...."

Rule 6 (c) requires the Carrier to notify the General Chairman in writing of its plan to contract out work "within the scope of the applicable schedule agreement."

The Organization contends that the work is specifically reserved to Scales and Work Equipment Sub-Department employees by virtue of the express language of Rule 4. Alternatively, the Organization argues that truck drivers within this sub-department have traditionally and historically performed the work at issue here utilizing the Carrier's snow plow equipped truck. In support thereof, the Organization offered the statements of the Claimant and several other employees which state that the employees at the Waukegan Yard have customarily performed snow removal work there in the past. The Organization maintains that Carrier may not contract with outside forces to perform work which is reserved to its Members by the Agreement. Moreover, the Carrier failed to give timely advance notice of its intent to contract out the disputed work, and thus the Organization submits that it was deprived of the required opportunity to confer with the Carrier for the purpose of discussing said contracting.

Carrier's position is that Rule 4 does not reserve the work at issue to Truck Drivers. Moreover, it refutes the Organization's claim as to practice, contending that outside contractors have performed the disputed work at Waukegan for at least fifteen years without protest by the Organization. Carrier records, including purchase orders and paid bills, submitted during the handling of this dispute on the property, support its position, Carrier stresses. Under these circumstances, Carrier asserts that Rule 6 is applicable, since only in the event that Carrier plans to contract out work within the scope of the applicable schedule Agreement must it notify the General Chairman of its intent.

After careful review of the record in its entirety, we conclude that the Carrier's position is correct. Rule 4, which defines the work of employees of the Scales and Work Equipment Sub-Department, including the Truck Drivers, does not make mention of snow removal. In the absence of an express reservation of the disputed work by the specific language of the Agreement, the employees were required to show that the work was reserved to them by custom, practice and tradition. See Third Division Awards 11526, 14284, 15813, 17061, 19822, 20157, 20532, inter alia. In this case, the evidence presented on the subject of past practice is conflicting at best. The Organization, as the moving party in the dispute, has the burden of proving all the elements of its Claim. Here, we are unable to resolve or reconcile the factual conflict.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1990.