

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  
(  
(Soo Line Railroad 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 hauling and filling work in conjunction with the work performed by the X-11 Crossing Gang from April 30, 1984 through November 8, 1984 (System File 47 NMA 121181/800-46-B-194).

(2) The Carrier also violated Rule 47 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, the senior active sectionman shall be reimbursed for the difference between the sectionman's rate and Track Department Truck Driver's rate and he shall be made whole for all overtime and the senior furloughed sectionman on Sub-district 1-A shall be made whole at the sectionman's rate for all pro rata and overtime pay lost from April 30 through November 8, 1984."

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.

On December 26, 1984, the Organization presented the instant claim on behalf of senior furloughed sectionman on Sub-district 1-A and senior active sectionman on the X-11 Crossing Gang. The basis for the claim was Carrier's alleged hiring of an outside contractor, Schneider Trucking, to perform hauling and filling work in conjunction with the X-11 Crossing Gang from April 30, 1984 through November 8, 1984.

The Organization contends that the disputed work has customarily and traditionally been performed by Carrier forces in accordance with Rule 1, the Scope Rule, and Rule 45(k), which reads:

"(k) Truck drivers in the track and B&B Department will perform track work and B&B work when they are not driving trucks. It is understood that when a truck is assigned to a B&B crew or a track crew, the position of truck driver will be assigned to the senior, qualified, available employee in the crew who wants the position."

The foregoing language, according to the Organization, demonstrates that the work at issue is encompassed within the scope of the Agreement and should properly be performed by its members. The Organization further maintains that it should have been afforded advance notice of Carrier's plans to contract out the work.

Carrier argues that for many years it has augmented its special crews, such as the X-11 Crossing Gang, with specialized equipment not available on the system. The specialized equipment referred to is a heavy duty dump truck, which Carrier asserts supplemented the truck working with the Crossing Gang. Given the longstanding nature of this practice, and the Organization's apparent acquiescence prior hereto, Carrier maintains that this claim must fail.

A careful review of the record in its entirety convinces us that the Organization has not proven that it was entitled to perform the work in question. We note that Rule 1, the Scope Rule, is general in nature and does not expressly refer to the work performed here. Rule 45(k), also relied upon by the Organization, is by the same token very unlike the specific, detailed work classification rules which spell out the duties to be performed by a particular craft or classification. We do not agree that Rule 45(k) is an express guarantee of work or that it specifically reserves to the Claimants the right to perform the work at issue here.

That being the case, this Board has required a demonstration of work performance by custom, practice or tradition in order to sustain a contracting-out violation. Here, the Organization offered no evidence whatsoever that its employees performed this work in the past, while the Carrier vigorously asserted that there has been a longstanding practice of using outside contractors to perform the work in question. Given this state of the record, we must conclude that the Organization has not met its burden of proving the essential elements of its claim.

A W A R D

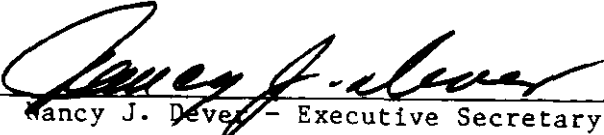
Claim denied.

Form 1  
Page 3

Award No. 28574  
Docket No. MW-27136  
90-3-86-3-197

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1990.