Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 29162
THIRD DIVISION Docket No. MW-28247
92-3-87-3-823

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 Employes
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(Duluth, Missabe and Iron Range 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 install window shades in the stacker cab and the north and south cabs on shuttle conveyor 5 on July 31, 1986 (Claim No. 58-86).

(2) The Carrier also violated Supplement No. 3 when it did not give the General Chairman advance notice of its intention to contract out said work.

(3) As a consequence of the aforesaid violations, B&B Mechanic D. Lonke shall be allowed three (3) 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.

In July 1986, window shades were installed in the cabs of the Stacker and Shuttle Conveyor No. 5 at Carrier's Duluth, Minnesota facility by an outside concern. The work took three hours. The Organization contends that the General Chairman was not given advance written notice of Carrier's intent to contract out the work in question, nor did Carrier exert a reasonable, good faith effort to assign the work involved to skilled employees in its B & B Department as required by Supplement 3 (a), (b) and (c) and the December 11, 1981 letter of National Agreement. Carrier's position is that the work at issue here is not reserved exclusively to Maintenance of Way employees by Agreement, custom or practice. As such, Carrier contends the work could properly be contracted without prior notification and the Agreement was not violated.

In a case such as this, it is the Organization's burden to establish as a prima facie matter, that the disputed work accrues to its employees as a matter of contract or past practice. The Organization has failed to show either. It relies on Rule 26, a Classification of Work Rule which makes no specific reference to the work at issue and which, as numerous Awards of this Board have held, does not confer upon the unit employees the reservation of such work. See Third Division Awards 20416; 18471.

The Organization's reliance upon Supplement 3(a)(b),(c) and the December 11, 1981 National Agreement is similarly unavailing. Paragraph (a) of Supplement No. 3 requires that Carrier make "... reasonable effort to perform all maintenance work in the maintenance of Way and Structures Department with its own forces." This qualification limits the application of the Rule to the Maintenance of Way and Structures Department, not the location at issue in this case. Paragraph (b) of Supplement No. 3 also does not apply, since it refers to reasonable effort on the part of the Carrier "to hold to a minimum the amount of new construction work contracted." This case does not deal with new construction.

Finally, we do not read the notification requirement under paragraph (c) to apply to any and all work contracted out by the Carrier but rather, to work which at least arguably is reserved to the Organization. In the absence of an explicit reservation of work in the Contract, therefore, the Organization was required to show that its entitlement was based on historical practice. Third Division Award 27902.

Aside from general assertions, which obviously do not constitute probative evidence, there is only one specific instance cited where an Organization employee has performed this work in the past. We feel that this is not sufficient to show the existence of a practice, and consequently determine no controlling practice was proved.

Finally, the Organization's reliance upon the December 11, 1981 National Agreement is not well-founded. We note that the Organization made a passing reference to this Agreement in its initial claim and neither party addressed the matter again until the Submissions before this Board were presented, thereby precluding us from considering the arguments and analysis which, effectively, were new arguments raised on this subject. The Organization had the burden of establishing the applicability of the cited Rules and Agreements to prevail in its claim. It has not done so and accordingly, we must deny the claim in its entirety.

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 3rd day of April 1992.