

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

(CSX Transportation, Inc. (formerly The Seaboard Coast
Line Railroad Company))
PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM:

"(1) The Agreement was violated when the Carrier, without conferring with the General Chairman, assigned work of pouring concrete slabs at Uceta Yard, Tampa, Florida to an outside party (Ray Davies Construction Company) during a period May 15, 1989 through mid June 1989. [Carrier's file 12 (89-733), Organization's file CARP-89-33].

(2) As a consequence of the aforesaid violation, Carpenter Foreman C. L. Roberts, Carpenters A. Oladell, B. J. Moore, Carpenter Helpers D. L. McCarty, G. L. Farquarharson, and E. L. Stanaland shall each be allowed 120 hours pay each at their respective straight time rates."

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.

At issue in this dispute is the contracting out of concrete work at the Uceta Yard in Tampa, Florida, between May 15 and mid-June, 1989. The job of forming up and pouring a concrete slab (6" thick; 230' x 34') was given to the Ray Davies Construction Company. The Organization alleges that the work performed by six contractor employees rightfully belongs to Maintenance of Way Bridge and Building Subdepartment employees and the subcontracting here was entered into in violation of Rule 2, Contracting, of the Agreement. The Organization seeks 120 man hours for each of the named Claimants.

Rule 2 reads as follows:

"RULE 2
CONTRACTING

This Agreement requires that all maintenance work in the Maintenance of Way and Structures Department is to be performed by employees subject to this Agreement except it is recognized that, in specific instances, certain work that is to be performed requires special skills not possessed by the employees and the use of special equipment not owned by or available to the Carrier. In such instances, the Chief Engineering Officer and the General Chairman will confer and reach an understanding setting forth the conditions under which the work will be performed.

It is further understood and agreed that although it is not the intention of the Company to contract construction work in the Maintenance of Way and Structures Department when Company forces and equipment are adequate and available, it is recognized that, under certain circumstances, contracting of such work may be necessary. In such instances, the Chief Engineering Officer and the General Chairman, will confer and reach an understanding setting forth the conditions under which the work will be performed. In such instances, consideration will be given by the Chief Engineering Officer and the General Chairman to performing by contract the grading, drainage, and certain other Structures Department work of magnitude or requiring special skills not possessed by the employees, and the use of special equipment not owned by or available to the Carrier and to performing track work and other Structures Department work with Company forces."

Rule 2 provides, with a few exceptions, that all maintenance work "in the Maintenance of Way and Structures Department" is to be performed by employees subject to the Agreement. The record of this case reveals that Maintenance of Way and Structure Department personnel have not been exclusively responsible for concrete work at the Yard. Carrier contended that employees covered by the Carmen, Sheet Metal Workers, and Electrician's Agreements had also built forms and poured cement. Third Division Awards 26209, 26551 and 27169, involving the same parties at the same location, support that contention. The real question thus becomes whether Carrier must ensure that the disputed work be performed by Department personnel and only contract it out under limited circumstances where (a) the Scope Rule is general in nature and (b) the work is not specifically and exclusively reserved to Maintenance of Way and Structures Department employees.

Although the Organization does not have the burden of proving that it has performed certain work exclusively in cases involving outside contractors (that is, vis-a-vis outside firms), it does have the burden of showing that the work at issue accrues with regularity to its members. In the absence of a work and position Scope Rule, and where the evidence indicates that by custom, history, and practice, the work has been performed by a wide variety of crafts, this is not possible to do.

Because of the Organization's failure to carry its burden in this case, this claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1992.