

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29569  
Docket No. MW-29271  
93-3-90-3-160

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned outside forces (Asplundh Tree Service) to cut the right of way on the A & WP - W of A Subdivision between Mile Post 174.0 located at Chester Yard and Mile Post 33.0 located at Madras beginning December 5, 1988 and continuing [System File 37-AWP-GA-89-5/12(89-430) AWP].

(2) The Carrier also violated Rule 2, Section 1 when it failed to confer with the General Chairman and reach an understanding prior to contracting out the work in question.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the Claimants\* listed below shall each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man-hours expended by the contractor's forces, in their respective districts, performing the subject work.

\*Section 5M18 - LaGrange, GA

Paul D. Stevens  
Stanley L. Rachels

Section 5M20 - Newnan, GA

Kenneth L. Green  
Willie Davis, Jr.  
Clyde C. Dicks, Jr.  
J. A. Tyre

Section 5M16 - Montgomery, AL

David H. West  
Bobby R. Bailey  
Dewey Bodiford  
H. J. Cooks, Jr."

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 employe 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.

Beginning December 5, 1988, the Carrier assigned an outside concern to perform work described by the Organization as "maintaining the right of way, i.e., cutting brush and mowing." The Organization contends that such work is customarily performed by Maintenance of Way forces and also notes that no advance notice of such contracting was provided to the Organization.

In its initial response in the claim handling procedure, the Carrier noted that "this work was done only under the pole line, which falls within the Signal Department not the Maintenance of Way."

Much of the Carrier's discussion concerns the Organization's lack of "exclusive" performance of such duties, citing numerous Awards denying Claims where such exclusivity is not shown. The Board notes that the exclusivity test is of paramount importance, given a general Scope Rule as here, where the dispute centers on which class or craft is entitled to perform the work. Awards involving contracting of work to outside forces frequently do not accept the exclusivity test as a threshold to considering the merits of a dispute.

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Here, however, the Organization has failed to demonstrate even a customary or predominant role in clearing brush, etc. under pole lines. Numerous Awards, on property and elsewhere, concern recurrent disputes as to such work being performed by either Signalmen or Maintenance of Way employees. Under these circumstances, the Organization has not shown sufficient control of the work to require advance notification and/or assignment thereto.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:



Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.