

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30468
Docket No. MW-30124
94-3-91-3-551

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

(Brotherhood of Maintenance of Way
(Employees
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former
(Chesapeake and Ohio Railway Company)

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

- (1) The Agreement was violated when the Carrier assigned outside forces to unload concrete trackties out of Carrier gondola cars at Mile Post 277.3 on the Clifton Forge District of the Huntington Division on May 7 and 8, 1990, [System File C-TC-7004/12 (90-601) COS].
- (2) The Agreement was further violated when the Carrier failed to discuss the matter with the General Chairman in good faith prior to contracting out said work as required by the October 24, 1957, Letter of Agreement (Appendix 'B').
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Foreman L. Entsminger, Equipment Operator E. Downey and Trackmen G. Simpson, T. Plecker and D. Spinner shall each be allowed eight (8) hours and forty-five (45) minutes of pay at their respective time and one-half rates of pay."

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 employee 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 the dates of the claim, the Carrier was in the process of replacing wood ties on the Clifton Forge District of the Huntington Division. Because it did not have the specialized equipment necessary for the installation of the concrete ties, the Carrier had engaged a contractor to perform this work.

Based upon the Carrier's explanation, we find the contractor was installing the concrete ties from specialized gondola cars, which were then filled with the removed wooden ties. Between 11:00 P.M. on May 7, 1990, and 7:45 A. M. on May 8, 1990, the contractor's employees emptied the wooden ties from the cars and loaded new concrete ties for the next day's work. It is this work of unloading and loading the ties that the Organization asserts was performed by persons not covered by the Agreement and is the basis for this claim.

The Organization first argues the work is reserved to employees covered by the Agreement. According to the Organization, the contractor's employees used a grapple truck material handler. The Organization says this is the type of equipment regularly operated by roadway equipment operators and would be classified as a Class A machine. The Organization cites Rule 66 - Classification of the Agreement which reads, in part, as follows:

"(a) Proper classification of employees and a reasonable definition of the work to be done by each class for which just and reasonable wages are to be paid is necessary but shall not unduly impose uneconomical conditions upon the Railway. Classification of employees and classification of work, as has been established in the past, is recognized.

(f) Employees in the roadway machine operator group will be used to operate all of the so-called heavier machines used in the performance of track and bridges and structures work except Mole Ballast Cleaners...."

Asserting the work of loading and unloading ties has historically been performed by covered employees on this property, the Organization further cites Rule 83 - Contract Work, which reads, in part, as follows:

"(b) It is understood and agreed that maintenance work coming under the provision of this agreement and which has heretofore customarily been performed by employees of the railway company, will not be let to contract if the railway company has available the necessary employees to do the work at the time the project is started, or can secure the necessary employees for doing the work by recalling cut-off employees holding seniority under this agreement."

Secondly, the Organization argues the Carrier violated Appendix "B" of the Agreement by not holding a conference to discuss contracting out the work prior to doing so. Appendix "B" is an October 24, 1957 letter Agreement from Assistant Vice President - Labor Relations B. B. Bryant to General Chairman F. M. Crance, which reads as follows:

"Yours of April 30, 1957, subsequent correspondence and conference held at Huntington, W. VA., September 27, 1957, concerning your requests to revise and amend Rules 12 and 83 of the C&O Agreement (Southern Region and Hocking Division) and Rule 59 of the Northern Region Agreement, including employees of the Fort Street Union Depot Company of Detroit and the Manistee and Northeastern Railway Company.

As explained to you during our conference at Huntington, W. VA., and as you are well aware, it has been the policy of this company to perform all maintenance of way work covered by the Maintenance of Way Agreements with maintenance of way forces except where special equipment was needed, special skills were required, patented processes were used, or when we did not have sufficient qualified forces to perform the work. In each instance where it has been necessary to deviate from this practice in contracting such work, the Railway Company has discussed the matter with you as General Chairman before letting any such work to contract.

We expect to continue this practice in the future and if you agree that this disposes of your request, please so indicate your acceptance in the space provided."

The above quoted Appendix "B" clearly enunciates the Carrier's commitment to discuss contracting out with the General Chairman. The Carrier's November 12, 1990 letter states that the "entire project was discussed" with the General Chairman. This contention was not challenged by the Organization. Moreover, the Carrier consistently stated the reason for contracting out was the lack of specialized equipment. The record does not reveal the details of the Carrier's discussion with the General Chairman, but we stress there is no evidence the Organization sought to have a specific portion of the work involved assigned to covered employees.

The Organization has not shown that the Carrier has the specialized equipment necessary for the proper installation of concrete ties or that the matter was not discussed with the General Chairman in accordance with Appendix "B." Thus, it is evident the Organization has not met its burden of proof.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of September 1994.