

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30515
Docket No. MW-30155
94-3-91-3-592

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Consolidated Rail Corporation

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

- (1) The Agreement was violated when the Carrier assigned or otherwise permitted outside forces (Action Cleaning Company) to clean Cranes #CT 1701 and #CT 4143 and Tamper #MP 9015 at Pennsauken, New Jersey on March 16, 1990 (System Docket MW-1414).
- (2) The Agreement was further violated when the Carrier failed and refused to furnish the General Chairman with advance written notice of its intention to contract out said work as required by the Scope Rule and failed to extend any effort to comply with the December 11, 1981 Letter of Agreement.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Machine Operator C. Miller shall be allowed eight (8) hours' pay at the repairman's 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 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 March 16, 1990, without first giving notice to the General Chairman, the Carrier contracted with Action Cleaning Company to clean Cranes 1701 and 4143 at Camden, New Jersey, and Tamper 9015 at Pennsauken, New Jersey. On April 9, 1990, the Organization filed the instant claim, alleging that this work belongs to members of the Organization under the Agreement's Scope Rule, and that the Carrier violated the Agreement when it failed to give advance notice of the contracting out. It contends that the Carrier could have rented the cleaning equipment, thus allowing its members to perform the work.

It should be noted for the record that the Organization also contended both on the property and in its Submission that the Carrier failed to comply with the December 11, 1981 Hopkins-Berge Letter of Understanding with respect to subcontracting. Subsequently, in Award 66-A of Special Board of Adjustment No. 1016, it was determined that the Hopkins-Berge letter is not applicable on this property.

The Scope Rule of the Agreement reads in pertinent part as follows:

"SCOPE

These rules shall be the agreement between Consolidated Rail Corporation (excluding Altoona Shops) and its employees of the classifications herein set forth represented by the Brotherhood of Maintenance of Way Employees, engaged in work generally recognized as Maintenance of Way work, such as, inspection, construction, repair and maintenance of water facilities, bridges, culverts, buildings and other structures, tracks, fences and roadbed, and work which, as of the effective date of this Agreement, was being performed by these employees, and shall govern the rates of pay, rules and working conditions of such employees.

In the event the Company plans to contract out work within the scope of this Agreement, except in emergencies, the Company shall notify the General Chairman involved, in writing, as far in advance of the date of the contracting transaction as is practicable and in any event not less than fifteen (15) days prior thereto. "Emergencies" applies to fires, floods, heavy snow and like circumstances.

If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the Company shall promptly meet with him for that

purpose. Said Company and organization representatives shall make a good faith attempt to reach an understanding concerning said contracting, but, if no understanding is reached, the Company may nevertheless proceed with said contracting and the organization may file and progress claims in connection therewith."

While the Organization contends that the disputed work is encompassed by the Agreement's Scope Rule, an examination of the language of the Scope Rule shows that the work is not specifically described therein. The question then becomes whether the work is "generally recognized as Maintenance of Way work" as provided in the Scope Rule.

The Carrier, during the handling on the property, made the material assertion that the cleaning of field equipment has always been contracted out system-wide without giving notice to the Organization. The Organization did not attempt to rebut this assertion at any stage of the proceedings.

Given these circumstances, we must be guided by a recent case involving a similar dispute between the same parties, Third Division Award 29866, where the Board held that advance notice was not required in similar circumstances:

"The Organization has offered nothing to overcome these assertions. Accordingly, the Board must conclude that a practice is in place of contracting out this specific activity. In this regard attention is directed to an earlier award involving similar arguments between these same parties. In Third Division Award 29558 the Board concluded:

'In this instance, the Carrier relies on long-established practice of contracting out this particular work. There is no clear prohibition to the Carrier's use of the special equipment, particularly in view of the past practice in doing so.'

The record dictates that the same result be reached here."

We concur with these Awards and accordingly conclude that the claim must be denied.

AWARD

Claim denied.

Form 1
Page 4

Award No. 30515
Docket No. MW-30155
94-3-91-3-592

ORDER

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 9th day of November 1994.