

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30526
Docket No. MW-30083
94-3-91-3-496

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
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(St. Louis Southwestern Railway Company

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

- (1) The Agreement was violated when the Carrier used an outside concern (John Cliff) to perform mowing along the right of way and in lots on the C-Branch at Mt. Vernon, Ridgeway, Lavon, Wylie, Nevada and Saltillo beginning on July 16, 1990 (System File MW-90-59-CB/495-93-A).
- (2) The Agreement was further violated when the Carrier entered into the above-described contracting transaction without giving the General Chairman at least fifteen (15) days' advance written notice of its plan to do so as set forth in Article 33.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Operator H. E. McCommas shall be allowed two hundred twenty-four (224) hours' pay at the weed mower's 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 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.

This claim concerns the Organization's contention that the Carrier gave an outside contractor mowing work along the right-of-way and in lots on the C-Branch at Mt. Vernon, Ridgeway, Lavon, Wylie, Nevada and Saltillo, Texas. The Organization also contends that the Carrier failed to give the General Chairman advance notice of the work.

In the latter part of the claim handling process, the Carrier denied contracting the work and made the assumption that the work in question was ordered by municipalities along the right of way. In response, the Organization presented a document which it claimed was a bill addressed to the Carrier for the work in question, amounting to 224 hours. The bill and attached memorandum were not signed, and the Carrier argued that the documentation was of doubtful authenticity.

The Board finds that the documents, while unsigned, do provide some basis for the Organization's position. This is supported by the Carrier's initial response to the claim by the Dallas Division Superintendent, which stated in pertinent part as follows:

"Upon investigation of your claim, we found that due to the excessive amount of work on claim dates, all of Carrier's mowers and employees were busy mowing at different locations. Inasmuch as the company was subject to a large fine for each day the railroad right of way on the C-Branch was unmowed, it was necessary to call on an outside contractor. No one lost any wages due to this occurrence."

It would be difficult to find a more convincing statement than this one as to the fact that the work is regularly assigned to Carrier forces. Further, the reasons for use of an outside contractor could have been readily set forth to the Organization through advance notice to and conference with the General Chairman. This required procedure was not followed here.

The Carrier also states that the Claimant and others were fully assigned to work on the dates in question. In some circumstances this could make inappropriate the granting of additional pay to the Claimant. Here, however, the Board finds that a sustaining Award is appropriate owing to the lack of advance notice and the concession that the work was at that moment assigned in other locations to Carrier forces.

The Award may be subject to modification based on the Carrier's contention that some part of the claimed work is the subject of a different Claim. If the Carrier can promptly demonstrate to the Organization that this matter is, in part, the subject of a different sustained claim, the remedy here may be appropriately modified to avoid duplicate payment.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 9th day of November 1994.