

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31449
Docket No. MW-30850
96-3-92-3-713

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

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

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

(1) The Carrier violated the Agreement when it assigned outside forces (Dryburg Company) to perform work (clean up spilled chrome pellets) on Tracks 530-531 and 535-536 in Conway Yard on January 24, 25, 28, 29, 30, 31 and February 1 and 2, 1991 (System Docket MW-2053).

(2) The Agreement was further violated when the Carrier failed to give the General Chairman prior written notification of its intent to contract out said work to outside forces as required by the Scope Rule.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Machine Operators M. Spickerman, T. Townsend and Trackmen D. Campbell, A. Opsatnik, W. Burton and R. Marshall shall each be allowed '...ten (10) hours pay for days listed, all overtime, credit for the days and months and to be made whole.' for the time the outside forces spent in performing the work in question."

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.

The Claimants who hold seniority as Machine Operators and Trackmen were on furlough status on the dates in question. On January 24, 25, 28, 29, 30, 31, February 1 and 2, 1991, the Carrier hired an outside contractor to remove chrome pellets from Tracks 530-531 and 535-536 in the Conway Yard near Pittsburgh, Pennsylvania.

The Organization filed the instant claim on behalf of the Claimants contending that the Carrier made no effort to notify the General Chairman of its intent to hire an outside contractor, nor did it make an effort to recall the furloughed Claimants who were readily available and fully qualified.

The Carrier denied the claim contending that the type of work at issue was not exclusive to Organization members. Furthermore, the Carrier argued that "the need for special handling and cleaning of the valuable commodity, in addition to the urgency of the matter, necessitated" its course of action.

This Board reviewed the record in this case and we find that the Organization established that the Carrier violated the Agreement when it assigned outside forces to perform the work at issue in this dispute. The Organization has shown that the work of cleaning debris from tracks and the right-of-way is work that is normally performed by members of the Organization throughout the industry. The Organization pointed out that the parties agreed that maintenance of way work is work that is customarily performed by Maintenance of Way employees. The Organization has also shown that the Carrier failed to give the Organization proper notice that it intended to subcontract the work at issue here.

This Board finds that the work is covered by the Scope of the Agreement. This Board also finds that the Carrier failed to give the Organization the appropriate advance notice of the subcontracting. Finally, we find that the Carrier failed to show that there was any required need for special handling or that any emergency existed which could not be met by the Claimants in this case.

The Organization has shown that BMW employees performed the same work in the past that was performed by this contractor.

Since the Claimants in this case were off on furlough and could have been called in to perform the work that the Carrier had the outside contractor perform, the claim must be sustained.

This Board rejects the Carrier's argument that since the Claimants were furloughed, they were not immediately available and, therefore, were not entitled to any backpay. If the opposite were true and the Claimants were working, this Board believes that the Carrier would argue that the Claimants were not entitled to backpay because they had received pay for the same period. The fact that they were on furlough made them available for service and since this was Organization work, the Carrier should turn to its furloughed employees before it goes to an outside contractor. In addition, there was insufficient evidence presented by the Carrier that there was any emergency situation that had to be addressed by using an outside contractor.

For all of the above reasons, the claim must be sustained.

AWARD

Claim sustained.

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 25th day of April 1996.