

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 31479  
Docket No. MW-31356  
96-3-93-3-253

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(CSX Transportation, Inc.(former Louisville  
( and Nashville 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 (A-Buck Construction) to build forms, pour concrete and set poles in the building of a picnic shelter for the Carrier's employees at Tilford Yard, Atlanta, Georgia on July 31, August 1, 2, 5, 6, and 7, 1991 [System File 9 (69) (91)/12 (92) LNR].
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intention to contract out said work as required by Article IV of the May 17, 1968 National Agreement.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Bridge and Building Subdepartment employees L. S. Nation, C. L. Wilson, M. W. Moore, B. H. Wood, F. E. Latimore, R. H. Cross, J. A. Lamb and B. L. Shaver shall each be compensated eight (8) hours' pay, at their respective rates of pay, for each of the dates listed in Part (1) above."

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 Organization's claim is that the Carrier, without advance notice, hired a contractor to pour a cement slab and set poles for a picnic shelter that was completed with the assistance of transportation employees who set up picnic benches and barbecue pits.

The Carrier's defense is that this is a Safety Committee activity with the Carrier employees volunteering their time to set up the picnic area with the assistance of the contractor and besides, the facility is purely a recreational facility for picnics for the employees and their families and has nothing to do with the operation of the railroad. The Carrier has relied upon Third Division Award 26477.

This issue of the Safety Committee performing various tasks on the Carrier's property with volunteers is certainly commendable, but, Carrier must be cautious of that Committee performing Scope covered work unless it has the permission of the Organization to do so.

This is evident by the Awards that have been rendered under circumstances similar to that found in this dispute.

The Carrier in its Submission referred to some six other disputes under similar circumstances that were pending before this Board at the time this Submission was written. Of the six cited, three have been resolved sustaining the Organization's position and awarding damages in each case. Those three are Third Division Awards 30160, 30161 and 31081.

In Award 30160, the Safety Committee cleared brush along a right-of-way.

In Award 30161, the Safety Committee cleaned up some debris and did some painting work.

In Award 31081, the Safety Committee removed, stripped, repainted and relocated some 30 lockers.

One other dispute not mentioned by the Carrier was another incident of the Safety Committee where it greased main line switches, cut brush and cleared switches. The Board resolved that issue in Third Division Award 31269 by sustaining the Organization's claim.

This dispute is different from those resolved in the above referenced Awards in that in this instance, an outside contractor was hired to perform concrete work on a facility alleged to be for the purpose of non-railroad use.

It is this Board's opinion that the facility's intended use was for the recreation of its employees, for safety barbecues and picnics. In other words, it was for the mutual benefit of the Carrier and its employees. It cannot, therefore, be classified non-railroad. Under the circumstances, the use of the contractor without notice to the Organization violated the Agreement, but this Board finds nothing in the record to support the assemblage of picnic benches and barbecue pits as being Scope work, nor is there any evidence that the contractor did anything other than pour the cement slab and set the poles for the shelter.

The Carrier is directed to determine the number of hours the outside contractor worked pouring the cement slab and setting the poles. Those hours are to be divided equally among the Claimants, who shall be compensated at the appropriate rate.

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 23rd day of May 1996.