

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32124
Docket No. MW-31796
97-3-94-3-69**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees
(Cedar Rapids and Iowa City Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned an outside concern to perform Maintenance of Way work (clear snow and apply sand to the parking lot) at the Cedar Rapids Yard Office on January 8, 1993.**
- (2) The Carrier also violated the provisions of Rule 1(b) when it failed to give the General Chairman proper advance written notice of its intention to contract out the work in question and to conference same.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Messers. B. Woodson and R. Howard shall each be compensated for "*** two hours and forty minutes pay at their respective time and one-half 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 were given due notice of hearing thereon.

Claimants hold seniority in the Carrier's Maintenance of Way Department. Rather than using Claimants to perform the work, on January 8, 1993, the Carrier, without prior notice to the Organization, utilized a contractor to remove snow and sand the parking lot located adjacent to the Yard Office at Cedar Rapids, Iowa. This claim followed.

Rule 1(b) states in pertinent part that:

"Employees included within the scope of this Agreement shall perform all work in connection with the construction, maintenance, repair and dismantling of tracks, roadbeds, structures, facilities and appurtenances related thereto, located on the right-of-way of the Carrier."

The Organization has not shown that work of removing snow and sanding the parking lot adjacent to the Yard Office is clearly "located on the right-of-way of the Carrier." Without such a showing, the Organization's burden to establish all the elements of its claim has not been met. We must therefore deny the claim.

AWARD

Claim denied.

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 13th day of August 1997.

LABOR MEMBER'S DISSENT
TO
AWARD 32124, DOCKET MW-31796
(Referee Benn)

A dissent is required since this award is palpably erroneous.

The Majority totally disregarded the central issue of the claim, i.e., the advance written notice prior to contracting out this work. During the handling of this dispute on the property, the Carrier never denied that it had previously assigned these very Claimants to perform snow removal and sanding work at the very same parking lot. The Agreement states that employees included within the Scope of this Agreement shall perform all work in connection with the construction, maintenance, repair and dismantling of tracks, roadbeds, structures, facilities and appurtenances related thereto, located on the right of way. Inasmuch as the Carrier had previously assigned said employees to perform the work, at the very least, establishes the Organization's right to receive notice. Hence, from a review of the record, the issue that whether the work involved was work customarily and historically performed by Maintenance of Way employees was answered to the affirmative. There can be no question but that the work was scope covered and should have been assigned to Maintenance of Way employees. The Majority erred by not so ruling.

Labor Member's Dissent
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Award 32124 is palpably erroneous and I, therefore, dissent.

Respectfully submitted,


Roy C. Robinson
Labor Member