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**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 33221  
Docket No. MW-32111  
99-3-94-3-509**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees  
(Houston Belt & Terminal Railway Company)

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (W. T. Byler) to perform Maintenance of Way work (operating dump truck #TR-10) on the Carrier's property beginning July 1, 1993 and continuing.
- (2) The Carrier also violated the December 11, 1981 Letter of Understanding.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Driver/Operator D. L. Davis shall be compensated, at his appropriate rate of pay, for all time worked by the contractor in the performance of the work in question beginning July 1, 1993 and continuing until the violation ceases.”

**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.

On May 14, 1993, Carrier issued a notice to the General Chairman of its intent to contract the services of various equipment, including a dump truck, from W.T. Byler during the month of July 1993. On June 17, 1993, Carrier met with the Organization to discuss Carrier's Notice of Intent regarding the proposed contracting. For its part, Carrier asserted that it did not own the equipment listed within the notice, nor was there qualified personnel available to operate the equipment. Carrier further asserted that equipment of this type had been contracted for over ten years sans objection from the Organization. At the conclusion of the conference, Carrier stated that it intended to proceed with the contracting as indicated in the May 14 notice and the Organization grieved.

On August 30, 1993, the Organization filed a claim on behalf of a Driver/Operator for all work performed by the contractor beginning July 1, 1993, specifically alleging that the work of driving a dump truck is reserved to members of the Organization. Carrier denied the claim asserting that the Organization failed to furnish any agreement or practice which reserves the work in dispute to the employees of the HB&T.

Regarding the Scope Rule, Carrier notes that it is a "general type" rule and does not list any specific function or duty which is reserved to Maintenance of Way employees. Carrier further contends that it properly served notice under the provisions of Article IV of the 1968 National Agreement regarding the contracting of the dump truck. Additionally, Carrier maintains that it honored the "good faith" understanding by utilizing an HB&T employee, with a leased truck, "wherever the work can justify a full time position." Finally, Carrier alleges that it has utilized the services of a contractor to drive a dump truck on the HB&T for over ten years and that the Organization has accepted the practice without prior objection.

For reasons set forth more fully in companion Third Division Award 33222, the Organization failed to carry its burden of proof on this record and the claim is denied.

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**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 21st day of April 1999.**