# Award No. 13461
# Docket No. MW-13116

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

## (Supplemental)

Daniel House, Referee

---

## PARTIES TO DISPUTE:

## BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

## ATLANTIC COAST LINE RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when it assigned the work of repairing Crawler-Tractor No. BD-65 to the Caterpillar Tractor Dealer in Jacksonville, Florida.

(2) The Carrier further violated the Agreement when it assigned the work of repairing pick-up truck No. R-390 to the R. L. Walker Chevrolet Company of Waycross, Georgia.

(3) Furloughed Mechanic R. H. Lindsley be allowed pay at the mechanic's rate of pay for an equal number of hours as were consumed by outside forces in making the repairs referred to in Parts (1) and (2) of this claim.

EMPLOYES' STATEMENT OF FACTS: Within the months of September and October, 1960, the Carrier contracted the work of making repairs to the running gear of Crawler Tractor BD-65 to the Caterpillar Tractor Dealer located in Jacksonville, Florida.

On October 21 and 22, 1960, the Carrier contracted the work of making repairs to the front end of pick-up truck R-390 to the R. L. Walker Chevrolet Company, Waycross, Georgia.

During the period that the aforementioned work was being performed by outside forces, Group 14 Mechanic R. H. Lindsley was furloughed. Mr. Lindsley was willing and able to perform the work in question had he been granted the opportunity to do so.

The aforementioned work was assigned to outside forces without benefit of any negotiation or discussion with the General Chairman in an effort to reach "an understanding setting forth the conditions under which the work will be carried out."

The Agreement in effect between the two parties to this dispute dated October 1, 1956, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

**POSITION OF EMPLOYES:** Rule 13 of the effective Agreement reads:

> "This agreement requires that all maintenance work in the Maintenance of Way and Structures Department is to be performed by employes subject to this agreement except it is recognized that, in specific instances, certain work that is to be performed requires special skills not possessed by the employes and the use of special equipment not owned by or available to the Carrier. In such instances, the Chief Engineer and the General Chairman will confer and reach an understanding setting forth the conditions under which the work will be carried out.
>
> It is further understood and agreed that although it is not the intention of the Company to contract construction work in the Maintenance of Way and Structures Department when company forces and equipment are adequate and available, it is recognized that, under certain circumstances, contracting of such work may be necessary. When such circumstances arise, the Chief Engineer and the General Chairman will confer and reach an understanding setting forth the conditions under which the work will be carried out. Under such circumstances, consideration will be given by the Chief Engineer and the General Chairman to performing by contract the grading, drainage and certain Structures Department work of magnitude or requiring special skills not possessed by the employes and the use of special equipment not owned by or available to the Carrier and to performing track work and other Structures Department work with company forces."

The aforequoted rule specifically and explicitly provides that all maintenance work in the Maintenance of Way Department is to be performed by employes subject to the Agreement. The only exception to the rule is spelled out therein, but there is no exception to the clear mandate of the rule which requires that, when the Carrier has work **which it considers to be within said exception,** it must first confer with the General Chairman and reach an understanding with the General Chairman **as to the conditions under which the work will be carried out.**

Unless and until the Chief Engineer confers with the General Chairman and reaches an understanding as to the conditions under which the work will be carried out, any contracting of maintenance work in the Maintenance of Way Department is improper and in violation of Rule 13.

In Awards 3215, 4888 and 7060, this Division held:

**AWARD 3215**

> "We do not deem it necessary to discuss the situation in which the Carrier found itself in attempting to get the work done other than to say that it agreed in plain and unequivocal language not to farm out this type of work without discussing it with the employes in an attempt to work the matter out. Failure to comply with this Supplemental Agreement constitutes a violation thereof and sub-

Referring to Claim (2):

Carrier maintains that inasmuch as its fleet of motor vehicles is spread over the six-state area of Virginia, North Carolina, South Carolina, Georgia, Alabama and Florida, that the procurement of such aligning equipment as would be necessary to accomplish the work claimed, cannot be economically justified. Therefore, Carrier maintains that it acted in good faith and within the limits of managerial responsibility in sending this vehicle to the R. L. Walker Chevrolet Company, Waycross, Georgia, for correction of steering and alignment factors concerned in properly correcting this vehicle for road service. The Organization in its handling of this claim on the property took the position that regardless of cost, and the fact that equipment to perform the work was not available, the work should, nonetheless, be performed by Group 14 employes.

This Board in denying claim in Award 5151 stated in part:

> "With reference to tools and equipment, the rule is somewhat similar. The Carrier is expected to provide the tools and equipment necessary to the usual and ordinary operation of the railroad. It is not required to have expensive equipment whose use is only occasionally needed. It is the function of the management, in the first instance, to determine the kind and amount of equipment needed. Its failure to provide tools and equipment common to the operation of the railroad is not ordinarily a justification for contracting out work that is within the scope of the agreement. On the other hand, the need for expensive equipment for which it has only occasional use may justify a farming out of the work to persons having the equipment to perform it."

Likewise, this Board in denying claim in Award 8834, stated in part:

> "We must accept the judgment of management where there is no showing that Carrier possessed the equipment to do the work complained of.
>
> . . . It is the general rule that a Carrier cannot contract out work and thus deprive its employes of the right to perform the work; yet, we cannot lose sight of the record as shown here that Carrier did not possess the equipment or the facilities to perform the work by its employes."

Also, this Board in denying claim in Award 10255 stated, in part:

> "Second, work may be contracted out when special skills, equipment or materials are required, or when the work is unusual or novel, or involves a considerable undertaking. (See Awards 5563, 6549, 7304.)"

(Exhibits not reproduced.)

**OPINION OF BOARD:** There is no relevant factual dispute in this case. Carrier concedes that the involved work was contracted out and does not deny Organization's claim that the contracting out was done without prior conference and negotiation with the Organization. If the involved work was reserved exclusively to the Organization, such contracting out without prior

conference was a clear violation of the explicit terms of Rule 13; Carrier's arguments about the unavailability of proper safe equipment are not a valid defense to the claim.

The record is clear that the work of repairing the crawler-tractor had previously been performed by the Organization, and was intended to be covered by the Scope Rule and by Rule 13. There is, however, no specific evidence to show that the work complained of in Part (2) of the Claim is work belonging exclusively to the Organization. Organization cites a letter from the Carrier to General Chairman Moore, dated July 23, 1959, which says:

> "Referring to your letter May 12, 1959, and our conference July 22, 1959, in connection with repairs to roadway trucks and possibly roadway grading equipment.
>
> As I explained to you in conference, whenever heavy repairs to this equipment are necessary, they will be performed by Group 14 employes of the Maintenance of Way agreement."

The evidence in the record is not sufficient for us to determine whether the repair work complained of in Part (2) of the Claim is covered by this letter or by the Agreement.

On the basis of the foregoing, we will sustain Part (1) of the Claim; we will deny Part (2) and sustain Part (3) to the extent of awarding Claimant Lindsley pay at straight time at the mechanic's rate of pay for the number of hours equal to those consumed by the outside forces in making the repairs referred to in Part (1) of the Claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing theron, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement.

AWARD

Claim sustained as to Part (1) and as to Part (3) as modified above; denied as to Part (2).

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of April 1965.