NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19903
Docket Number MW-19908

Irving T. Bergman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(The Illinois Central Railroad Company

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

(1) The Carrier violated the Agreement when it used outside forces to spray weeds and brush on the right-of-way on the Iowa Division beginning on April 14, 1971 (System File IA-26-M71/Case No. 787 MofW).

(2) The Carrier violated the Agreement when it used outside forces to spray weeds and brush on the Louisiana Division beginning on May 14, 1971 (System File LA-102-M-71/Case No. 782 MofW).

(3) The Carrier violated the Agreement when it used outside forces to spray weeds and brush on the Tennessee Division beginning on May 27, 1971 (System File T-92-M-71/Case No. 779 MofW).

(4) Machine Operators M. J. Hunt (511241) and George DeVries (504258) each be allowed a day's pay for each date of the violation described in Part (1) of this claim.

(5) Lange Hughey (708986) be allowed a day's pay at the head operator's rate, G. W. Johnson (705116), P. L. Ballard (703456) each be allowed a day's pay at the wing operator's rate for each date of the violation described in Part (2) of this claim.

(6) B. C. Dennis (702096) be allowed a day's pay at the head operator's rate, R. H. Roe, Jr. (10305) and R. W. Bowden (12109) each be allowed a day's pay at the wing operator's rate for each date of the violation described in Part (3) of this claim.

OPINION OF BOARD: Petitioner has presented a claim that involves three occasions on which the Carrier has contracted out the work of spraying weeds and brush. The three alleged violations of the Agreement between the parties have been consolidated. The contentions and arguments of the Organization are the same with respect to each of the three occasions and the Carrier's contentions and arguments are the same as to each of the three occasions.

The Organization, in essence, contends that the work performed is within the Scope Rule of the Agreement; that the work has been performed by Maintenance of Way employes; that the Carrier has equipment to perform the work; that the work belongs exclusively to Maintenance of Way employes and may not be contracted out.

The Carrier contends that the Scope Rule is general and does not specifically describe or define this work as within the scope of work to be performed exclusively by Maintenance of Way employes. In addition, the Carrier has contended that this work has been performed since 1952, and has listed specific instances of the times this work has been performed by outside contractors with no objection by the Organization. Carrier also maintains that its equipment is outdated; that its equipment cannot handle the new type of chemicals being used; that a better job is done more economically by contractors specializing in this work. Carrier has stated that when this work was bulletined at a prior occasion none of its employes applied and, finally, that claimants were employed on other work and did not lose any pay because contractors performed the work.

An awesome number of prior Awards have been submitted by each party to support its position. Awards submitted by the Organization for the most part defend the Organization's right to protect work which is clearly defined as within its scope. These Awards support the argument that economy is not the unqualified standard which gives a Carrier the right to subcontract work which belongs exclusively to the employes in question. Also, it is presumed from the Awards that the required skill and equipment is available.

The argument and supporting Awards on behalf of the Organization's position have crystallized the issue. The first consideration is whether or not the Scope Rule clearly specifies or defines the work in question so that we may conclude that it belongs exclusively to the Maintenance of Way employes.

The answer to this issue is found in the Rule. It is general in its language and no reference is made to this work as included within or excluded from the Rule. Although the Organization has asserted that the work belongs to it exclusively, no proof appears in the record to sustain that position. It is not disputed that the work has been performed by Maintenance of Way employes and also that a substantial part of this work has been performed by contractors.

We believe that for the Organization to insist that its forces must do this work regardless of other factors involved, the Scope Rule must say so. If the Rule is general in its language, we look to prior Awards of this Division which cover that situation.

There is overwhelming support of the proposition that if the Scope Rule is general, there is no exclusivity. Recent Award 19608 of this Division in denying the claim stated: "The Scope Rule in this case is general in nature. There is no specific language in the Agreement which reserves the involved work to Maintenance of Way Forces. Therefore, the burden was upon the Organization to prove by probative evidence that the work claimed has been exclusively assigned and performed by Maintenance of Way employes in the past." The same parties and Agreement were involved in that case as in this one. Another recent Award 19516 of this Division, between the same parties involving the same Agreement stated: "It is also clear that the Scope Rule in question does not specifically reserve the disputed work to the com-

plaining employes, but is of a type characterized as general in nature. A host of Board decisions hold that, where such a general Scope Rule controls, the Petitioner, in order to prevail, must prove that the work in issue has been traditionally and customarily performed by covered employes on a system-wide basis to the exclusion of all other employees."

The language quoted from these Awards follows the identical language set forth in a multitude of prior Third Division Awards dealing with the issue of a general Scope Rule. In all cases denying the claim the Petitioner failed to prove that the work was uniformly performed by the forces which claimed the work. That is true also of this case.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

Petitioner has failed to establish that the work in question belongs exclusively to and has traditionally been assigned to it.

A W A R D

Claim Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.

NATIONAL RAILROAD ADJUSTMENT BOARD

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Petitioner has failed to establish that the work in question belongs exclusively to and has traditionally been assigned to it.

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Claim Denied.

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By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.