

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21096
Docket Number MW-21021

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Soo Line Railroad Company

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

(1) The Carrier violated the Agreement when it assigned outside forces to load and unload grain doors and grain door kits at Kenmare, North Dakota (System File 800-13-59).

(2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it did not give the General Chairman advance written notice of its intention to contract said work.

(3) Section Foreman Milo A. Nystrom be allowed one hundred nine (109) hours of pay at his time and one-half rate for May 1, 2, 3, 6, 8, 13, 15, 17, 20, 22, 24, 27, 29, June 3 and June 5, 1973 in addition to pay at his time and one-half rate for all overtime hours expended by outside forces in performing the work described in Part (1) hereof subsequent to June 5, 1973.

OPINION OF BOARD: Claimant disputes Carrier's action of asserted assignment to outside forces of certain work regarding grain doors.

Carrier asserts that the Claimant failed to specifically designate, on the property, the rule allegedly violated. Claimant insists that the context of the final denial letter, by Carrier's designated official, leaves no doubt that the basis of the claim was understood. We find it unnecessary to decide that issue. Assuming that Carrier was fully apprised on the property the claim of a violation of the Scope Rule must nonetheless be dismissed.

The rule in question is concededly a general scope rule. Awards too numerous to cite have consistently determined that in order to prevail (under such a rule) Claimant must show that the work has been performed by the employees by history, custom and tradition, to the exclusion of others, on a system-wide basis. This Board has noted the dispute between the parties in this regard and is unable to find that Claimant has satisfied the burden of proof mandated by the prior Awards of this Board.

We have noted that the claim also asserts a violation of Article IV of the May 17, 1968 National Agreement. Our review of the record shows that Claimant made reference to Article IV in the early stages of the handling

(June, 1973). But, we find no further reference to that asserted violation during the remaining handling on the property even though the matter was not submitted to this Board until October 1, 1974. In fact, when Carrier's highest designated official stated his understanding of the issue presented in the claim, he made no reference to Article IV - and Claimant did not correct his statement of the issue.

Moreover, we find no reference to Article IV in Claimant's Submission to this Board.

Only after Carrier stated, in its Submission here, that the employees had asserted a violation of Article IV, did Claimant respond in the Reply Submission, by citing the Article and concluding a violation.

We feel that the status of the record clearly shows that the dispute handling on the property dealt with the asserted violation of the Scope Rule, and not a violation of Article IV. That conclusion is further confirmed by the Organization's failure to mention a violation of Article IV in its Submission here. We find it inappropriate to expand our consideration to an issue which was not thoroughly handled and urged below.

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 Employees involved in this dispute are respectively Carrier and Employees 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 claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 14th day of June 1976.