

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26084

Docket Number MW-25911

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Kansas City Southern Railway 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 perform work in connection with a grade crossing renewal project at Mile Posts 84 and 106 on March 10, 11 and 14, 1983 (Carrier's File 013.31-277).
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. As a consequence of the aforesaid violations, furloughed Trackman J. E. Clark shall be allowed thirty (30) hours of pay."

OPINION OF BOARD: The Organization asserts that Carrier violated the Scope Rule (Rule 1) when it used the B&H Boyer Construction Company on March 10, 11 and 14, 1983 to augment Section Crew 008 in connection with crossing renewal work at Mile Posts 84 and 106 on the Hume, Missouri section. It maintains that said work was encompassed within the Scope of the Agreement and traditionally performed by Carrier's Track sub-department forces. It also charges that Carrier violated Article IV of the May 17, 1968 National Agreement by its (Carrier) failure to notify the General Chairman, at least fifteen (15) days in advance of the contracting transaction. Further, it argues that Carrier failed to make the good faith effort required by the December 11, 1981 Letter of Agreement to use Maintenance of Way forces to the extent practicable, including the procurement of rental equipment.

Carrier disputes the Organization's Claim that a contractor was used to perform the contested work, arguing instead that it engaged the B&H Boyer Construction Company merely for the equipment (i.e. backhoe, asphalt rollers), which it does not own to assist railway forces in the rebuilding work. It notes that for years it has used contractors in road crossing construction work without prompting an employee claim. It contends that the Organization has not proved by clear specific reference to Scope Rule language that said work accrued to the Track sub-department forces, nor alternatively demonstrated that the work at issue was customarily performed by covered workers on a systemwide basis to the exclusion of others. As such, it argues that since the work contracted was not within the Scope of the Agreement, it was not obligated to apprise the Organization of its intent to utilize an outside contractor. Moreover, it also questioned the bonafides of the named Claimant on the grounds that he would not have stood for the work had he not been in force reduction.

In our review of this case, we concur with Carrier's position. As the moving party in this proceeding, and particularly where a Scope Rule violation is charged, the Organization was obligated to demonstrate that said work accrued to the Track sub-department forces. This proof could be established either by reference to explicit Agreement language or a persuasive demonstrable showing that said forces traditionally and historically performed this work.

Upon the record, the Organization has not established that the allegedly affected forces were entitled to this work. It neither identified clear Agreement language that reserved the work to the Track sub-department forces, nor showed through concrete illustrations that said work was traditionally performed by these forces. Outside of assertions that the work was encompassed within the Scope of the Agreement, it did not prove this point. Under these circumstances and in the absence of such proof, we cannot conclude that the Scope Rule was violated or that Carrier, given this Finding, was obligated to provide the General Chairman fifteen (15) days advance notice. Article IV of the May 17, 1968 National Agreement requires notification if the planned contracting-out is within the Scope of the applicable schedule Agreement. Scope coverage was not demonstrated herein.

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

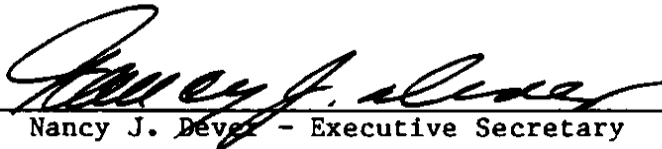
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1986.