

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Consolidated Rail Corporation

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 loading work in connection with an oil spill at Clearfield, Pennsylvania on August 15, 16, 17, 18, 19, 22, 23 and 24, 1983 (System Docket CR-404).

2. As a consequence of the aforesaid violation, furloughed Crane Operator J. R. Hummel shall be allowed sixty-four (64) hours of pay at the crane operator's straight time rate."

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.

The relevant facts of this Claim are not in dispute. Claimant holds seniority as a Class 1 Machine Operator in Carrier's Track Department. Claimant was on furlough on the days in question.

On August 15, 1983, a derailment at Clearfield, Pennsylvania resulted in the spillage of approximately 3,000 gallons of diesel fuel, thereby contaminating nearby soil. Subsequently, Carrier was ordered by the Environmental Protection Agency to immediately remove and dispose of the contaminated soil. Carrier contracted this work to Frank Varischetti Sanitation Company (Varischetti). The work was performed on August 15-19 and 22-24, 1983, a total of 64 hours.

On September 2, 1983, the Organization filed the instant Claim alleging that Carrier violated the Scope Rule when it contracted out the work without providing at least 15 days notice to the Organization. Carrier timely denied this allegation. Thereafter, the Claim was handled in the usual manner on the property. It is now before this Board for adjudication.

The Organization argues that the instant facts did not constitute an "emergency." As a result, it suggests, Carrier was not within any exception which would permit it to forego the 15 days notice applicable to contracting out.

Alternatively, the Organization maintains, even if the oil spill did constitute an emergency, Carrier should have used its own crane which Claimant was ready, willing and able to operate to load the Contractor's trucks. It insists that Carrier's crane was nearby, while the contractor's was 4 hours away. Accordingly, in the Organization's view, Claimant was deprived of work improperly contracted out. It therefore asks that the Claim be sustained.

Carrier, on the other hand, asserts that the work was properly contracted out. Carrier stresses that this was an emergency, and for this reason the 15 day notice provision was inapplicable.

Carrier further contends that it is not required to piecemeal work by having Claimant perform a portion while the contractor performs another portion. Accordingly, Carrier asks that the Claim be denied.

After careful review of the record evidence, we are convinced that the Claim must be denied. This is true for several reasons.

First, it is clear that the facts herein establish an emergency situation. Under the emergency exception to the Scope Rule, it is permissible for Carrier to forego notice to the Organization.

Second, it is clear from the facts in the record that special skills and expertise were required to conduct the removal and disposal of the contaminated soil. That Varischetti was the only contractor in the area licensed to perform this type of clean-up is a strong indicator that special skill was required. When special skills, not possessed by employees, are required to perform the work it is permissible for the work to be contracted out. (See Third Division Awards 7805, 11862 and 11969). This was precisely the situation in the instant Claim. As a result, it was proper for Carrier to contract out the work.

Finally, it has been well established by this Board that work contracted out will be considered as a whole. It will not be artificially divided into discreet units such that the employees could have performed some of the work. (See Third Division Awards 6112 and 12317). Hence, Carrier was not required to "piecemeal" the work in order to enable employees to perform some small portion thereof. Accordingly, and for the foregoing reasons, the Claim must be denied.

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 25th day of February 1988.