

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(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 or otherwise permitted outside forces to perform ditching work between Military Road and Grove Street at Fond du Lac, Wisconsin on August 14, 1985 (System File R213 #1627P/800-46-B-219).

(2) The Carrier also violated Rule 47 of the Agreement when it did not give the General Chairman advance notice of its intention to contract said work.

(3) As a consequence of the aforesaid violations, each member of B&B Crew 602, assigned thereto on the claim date, shall be allowed pay at their respective straight time rates for an equal proportionate share of forty (40) hours and RTC Operator J. D. Peterson shall be allowed eight (8) hours of pay at his 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 employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

Commencing on August 14, 1985, the City of Fond du Lac, Wisconsin, performed certain ditch cleaning work between Military and Grove Streets, part of which occurred on Carrier owned property. The Organization filed a Claim contending that Rule 47 was violated when Carrier failed to give notice of its intent to contract said work.

In denying the Claim Carrier pointed out that the ditch cleaning work was performed in connection with a City project to improve storm sewers to eliminate flooding in the area. While Carrier allowed City workers to come on its property to clean a culvert under a grade crossing it made no agreement concerning the City performing the work. The City, it is argued, holds an easement right which allows it to perform maintenance work on the City's drainage system. The work performed in unplugging the culvert was drainage system maintenance work.

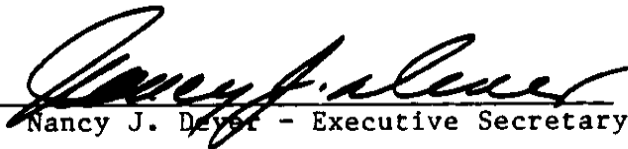
In the circumstances of this case we are not persuaded that the Agreement was violated when Carrier did not give notice under Rule 47 that the work discussed in the Claim was to be completed by City workers. While there undoubtedly are situations where ditch and culvert cleaning, performed by other than Carrier employees, would require notice under Rule 47, we are not persuaded that this case is one of them. The Claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois, this 1st day of February 1990.