

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29558
Docket No. MW-28989
93-3-89-3-411

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned an outside contractor (Railroad Construction Company) to unload ties along the right-of-way on the Harrisburg Division beginning April 18, 1988 (System Docket MW-14).

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

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Machine Operator R. Snyder shall be allowed pay for eight (8) hours each work day beginning April 18, 1988 and continuing for as long as the Railroad Construction Company unloaded ties on the Harrisburg Division."

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 employe 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.

This dispute concerns the Carrier's contracting of the unloading of railroad ties from gondola cars by use of the contractor's equipment, which is described by the Carrier as a "specially constructed backhoe...mounted on the gondola car."

No advance notice of the action was provided to the General Chairman. The Scope Rule requires such notice where the Carrier plans to "contract out work within the scope of the Agreement."

In this instance, the Carrier relies on long-established practice of contracting out this particular work. There is no clear prohibition to the Carrier's use of the special equipment, particularly in view of past practice in doing so. The Carrier also asserts that the Claimant, who was otherwise fully employed at the time, was not qualified to operate such special equipment. Given these circumstances, the failure to provide advance notice is not sufficient to warrant sustaining the Claim.

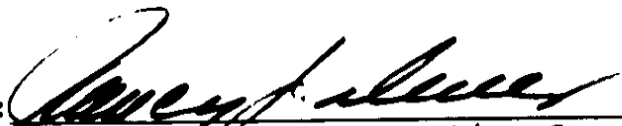
Beyond and apart from the question of notice, the Organization has not established a clear Rule violation in these particular circumstances.

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 9th day of March 1993.