Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30271
Docket No. MW-29368
94-3-90-3-279

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

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

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

(1) The Agreement was violated when the Carrier assigned outside forces (Miami Valley International) to replace the engine in Little Giant Crane 7722 and deliver said crane to Conrail on September 19, 1988 (System Docket MW-359).

(2) The Agreement was further violated when the Carrier failed to give the General Chairman prior written notification of its plan to assign said work to outside forces as required by the Scope Rule.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Repairman R. E. Owens shall be allowed 75.8 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 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 waived right of appearance at hearing thereon.

On November 2, 1988, the Organization submitted a Claim on behalf of a Repairman stating, in pertinent part as follows:

> "On September 19, 1988, Miami Valley International, a private contractor, delivered to Conrail Little Giant Crane 7722. The contractor had replaced the engine in the Crane.
>
> It is the Organization's position that this contracting transaction was in violation of the Agreement. The Organization did not receive a 15 day notice so that a meeting could be scheduled to discuss said contracting.
>
> The claimant is a regularly assigned Repairman and is qualified and was available and has rebuilt the engine in this crane before. The Carrier's decision to contract this work out presents a loss of work opportunity for the claimant.
>
> The work as I have stated was finished on September 19, 1988. The contractor worked a total of 75.8 hours replacing the motor in this crane."

During the claim handling procedure, the Carrier argued that the Claim was defective in that it "lacks specificity" as to the date that the worked was performed. (The record provided by the Carrier shows that the work was performed on July 15, 1988.) In its Submission, the Carrier extended its objection by stating that the Claim was defective in that it had not been initiated within 60 days "from the date of the occurrence on which the claim is based". This portion of the objection was not raised on the property.

The Board finds the Carrier's procedural argument without substance. It is entirely reasonable that the Organization had no basis for contending a violation until September 19, 1988, when the crane was returned to the Carrier's property. It was at this time that the Organization determined that the engine replacement had occurred. The actual date of the replacement could not reasonably be ascertained until the Carrier provided the necessary information. The Claim was initiated in timely fashion within 60 days from September 19, 1988.

The parties recognize that there are two engines involved with the Little Giant crane -- one to operate the crane itself, and the other to provide motive power to the equipment (the "carrier engine"). It is the Carrier's contention that major repair and/or replacement of the carrier engine is work which is not regularly performed by Maintenance of Way forces and is, in fact, regularly contracted to an outside facility. In support of this, the Carrier notes that the same engine had previously been rebuilt by another outside concern, as indicated on the work order for the current repair.

On the other hand, the Organization contends that the Claimant, and perhaps others, have performed this work. As evidence of this is a statement from a Foreman that the Claimant had previously "changed and rebuilt carrier eng." on a similar crane.

The Board must conclude that there is no reservation of this specific work under the Agreement, and the Organization has not demonstrated that such Carrier engine repair work is customarily performed by Maintenance of Way forces. The evidence that Repairman have worked on Carrier engines of cranes must be viewed in relation to the Carrier's assertion that such work "has historically been performed by an outside contractor across this property" (as shown, for example, on this particular engine).

Under these circumstances, the Board finds insufficient support for the application of Rules as to advance notice of proposed contracting and/or required assignment of the work to the Claimant.

In support of this conclusion is Third Division Award 26565, involving the same parties and a similar issue. That Award concluded:

> "This Board has held, on numerous occasions, that if the Scope Rule does not specifically cover the work in dispute, a past practice must be established. (See Third Division Award 25370) In this case, the Organization has neither identified clear contractual language demonstrating that its members are entitled to the work, nor has it shown by concrete evidence that said work has traditionally been performed by Maintenance of Way employes. (See Third Division Awards 26084 and 25276.) Hence, this Board cannot find that there was a violation, and the Claim must be denied."

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of July 1994.