

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30911
Docket No. MW-30217
95-3-91-3-671

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 Employees
(
(CSX Transportation, Inc. (former Louisville
(and Nashville Railroad Company)

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

(1) The Agreement was violated when the Carrier assigned an outside concern (Dillard Construction) to clean up and remove old ties and ballast with a bulldozer along the 'B' Line at Radnor Yard, Nashville, Tennessee on May 21, 22, 23, 24, 25, 28, 29, 30, 31 and June 1, 1990 [System File 10(59)(90)/12(90-866) LNR].

(2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it failed to furnish the General Chairman with 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 T. E. Vernon shall be allowed eight (8) hours' pay at his straight time rate for each of the dates listed in Part (1) above."

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.

This is a dispute concerning contracting of work, for which the Carrier did not provide advance notice to the General Chairman. As stated by the Organization, an employee of an outside contractor was employed on May 21-25 and May 28 - June 1, 1990 to use "an ordinary bulldozer, clearing track materials from the right of way." The Carrier's version of the undertaking was that a contractor was hired "to clean up an old dump area near the so-called 'B' line near Radnor yard, Nashville, Tennessee, on non-operating property".

Among other responses, the Carrier set forth the following:

1. The contractor did not work on May 28 and 31 and June 1.
2. The Claimant was on vacation May 29-June 1 and thus unavailable for these days.
3. On the remaining days, the Claimant was working his regular position as a Crane Operator.
4. The Claimant is not on record as qualified to operate the type of equipment utilized for the clean-up work.
5. The work was on "non-operating property and had nothing to do with" tracks in active use.

The claim is advanced on behalf of a specific Claimant. Based on the factors listed above, there is insufficient basis to sustain the claim in his favor. Consideration that the work was on "non-operating property" is arguably sufficient to excuse the failure to provide advance notice.

AWARD

Claim denied.

ORDER

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 8th day of June 1995.