

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30913
Docket No. MW-30234
95-3-91-3-687

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
(
(Consolidated Rail Corporation

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

(1) The Agreement was violated when outside forces were assigned to perform the work of loading, transporting and unloading Tie Gang TO-144 machinery on the New Jersey Division starting at Bethlehem, Pennsylvania and ending at Hazleton, Pennsylvania on May 16 and 17, 1990 (System Docket MW-1483).

(2) The Agreement was further violated when the Carrier did not give the General Chairman prior written notification of its plan to assign said work to outside forces.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the 18 Claimants* listed below, except Mr. Parvel, shall each be allowed eight (8) hours' pay at their respective time and one-half overtime rates of pay for the position claimed along with six and one-half (6 1/2) hours' pay at the double time rate of pay for the position claimed. Mr. Parvel to receive eight (8) hours' pay at the straight time rate of pay, along with six and one-half (6 1/2) hours' pay at the time and one-half overtime rate.

* Mr. L. Breiner
Mr. W. McDermott
Mr. R. T. Fogel
Mr. R. Parvel
Mr. E. Hollock
Mr. T. Pockevich
Mr. R. Fogel
Mr. C. Dente
Mr. W. Pavlick

Mr. A. Breymeier
Mr. R. Gale
Mr. M. Kudrich
Mr. R. Hodle
Mr. M. Ambrose
Mr. D. Heffner
Mr. K. Weirbach
Mr. S. DeAngelis
Mr. F. Gudman"

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 May 16-17, 1990 the Carrier employed two contractors to load, transport from Bethlehem to Hazleton, and unload equipment assigned to Tie Gang TO-144. The contractors used heavy (50 to 75-ton) cranes and 14 tractor-trailers to perform the work.

The Organization notes that no advance notice of the contracting was provided and also contends that the work was improperly contracted, since "work of this character has customarily and historically been performed by the Carrier's Track Department Vehicle Operators, Machine Operators and Trackmen, and is contractually reserved to them under the Scope Rule and Rule 1".

The Carrier determined, in this and other instances, to relocate equipment by highway transportation, rather than on its own tracks. The Board finds no basis to dispute the Carrier's right to determine that these movements be made by highway, rather than by rail. The record simply does not support the Organization's contentions as to its performance of such highway transportation on a customary basis.

This claim is not a case of first impression. The Carrier points to a previous claim identified as System Docket CR-3974 involving a similar matter in 1988. At that time, the Carrier advised the Organization in part as follows:

"On March 11, Bob Ross Company transported a Gradall EG 3001 from Altoona, Pa., to the Brier Hill Shop and on March 28, 1988, Bob Ross Company transported a Spiker SM2139 from Canton, OH, to Altoona, PA. . . .

Contrary to your position, the Carrier was not required to notify you of the intent to utilize the contractor. In fact, we have historically used contractors to haul machinery and equipment from our Shops to various locations over the entire system. In this connection we wrote you on January 19, 1988, regarding System docket CR-2780, which was denied by the undersigned. Along with that letter we supplied your office copies with a considerable amount of trucking bills from contractors for years 1982 to 1986, inclusive, supporting our position."

System Docket CR-3574 was not advanced off the property. The claim is cited here to indicate the Carrier's continuing contention that over-the-road equipment transportation has in fact been contracted on a regular basis.

The Carrier reiterates this position here, stating that "the handling (loading, unloading and transporting) of equipment has historically been contracted out" and that it does not have cranes of sufficient size, nor the necessary number of tractor-trailers to perform the work.

In this dispute, the Board finds appropriate the conclusion stated in Third Division Award 27629, as follows:

"The burden of proof lies with the Organization to support its contentions (Third Division Awards 24508, 26711). This Board's review of the facts and circumstances in the instant case fails to support the Organization's position. A search of the record finds that the work is not specifically covered by the language of the Scope Rule. When not explicitly granted by Agreement, the Organization must show proof that the work was customarily and traditionally performed by the Employees (Third Division Awards 23423, 26084). Statements to that effect . . . are not proof."

AWARD

Claim denied.

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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 8th day of June 1995.