

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31001
Docket No. MW-29637
95-3-90-3-633

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
(
(Elgin, Joliet and Eastern Railway Company

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

- (1) The Carrier violated the Agreement when it assigned an outside contractor (Kobe Landscaping and Maintenance) to cut brush along the Carrier's right of way and mow lawns and garden around the Joliet O&O Building beginning on April 13, 1989, and continuing (System File TJ-12-89/UM-31-89).
- (2) As a consequence of the aforesaid violation, Trackman J. Islas, A. Diaz, T. Hernandez and J. Tenoco shall each receive pay at their respective time and one-half rates of pay for an equal proportionate share of the total number of man-hours expended by the outside contractor performing the work described in Part (1) hereof."

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 March 16, 1989 the Carrier wrote to the General Chairman in pertinent part as follows:

"This is to notify that the Carrier intends to contract out the below-listed work due to the magnitude of the planned 1989 Construction Project on the Joliet and Gary Divisions requiring all available employees to be assigned to work in other areas:

[Reference is made to 'landscape service to the lawn area' at Joliet, Illinois, on the Joliet Division.]"

As provided by the Agreement, a conference was requested and held on March 27, 1989, to discuss this proposed contracting of work, following which the Carrier went forward with the use of the outside firm commencing April 13, 1989. The Organization initiated a timely claim thereafter.

During the claim handling procedure, one of five named Claimants was dropped from the claim, and the Board finds no procedural problem with this. The claim as brought to this Board includes reference to "cut brush along the Carrier's right of way." As noted by the Carrier, this aspect was not included in the claim as discussed on the property. While accepting the claim for review, the Board will necessarily ignore this reference.

The Organization has established to the Board's satisfaction that Maintenance of Way employees have been regularly assigned to the landscaping work around Carrier offices at Joliet for an extended period. The Organization relies on this practice and the provisions of Rule 3 describing work to be performed by the Track Sub-Department in pertinent part as follows:

"(a) All work in connection with the construction, maintenance or dismantling of roadway and track, such as...mowing and cleaning; brush cutting, ...and all other work incident thereto, shall be track work."

The Organization suggests that this may be read to reserve "all" mowing and cleaning work to Track Sub-Department employees. This, however, is not what it states. The Rule encompasses "all work" which is in connection with the "construction, maintenance or dismantling of roadway and track." The Board has no basis to determine that this includes landscaping (mowing, garden work, etc.) fully removed from any "roadway and track."

The Carrier complied with the notice provision, and this was of particular importance since the work had been previously assigned to Maintenance of Way employees. From the explanation provided in its letter to the General Chairman, it may be reasonably inferred that the Carrier's explanation for contracting the work was the assignment of all its active forces to other work. The Carrier also pointed out that such forces were working overtime during this period. As the Organization argues, however, these are not supportable reasons for contracting work, since Maintenance of Way employees could have been recalled from furlough.

This, however, is quite apart from the basic consideration as to whether the Carrier is required to continue to assign the mowing/landscaping work to Maintenance of Way forces. Since the work is not included in the "track work" defined in Rule 3, the Board must necessarily find that the Carrier may exercise its right, as specifically retained in the Agreement, to contract the work. While the Organization demonstrated that Carrier employees did and could perform the work, there is no contractual basis to find that these incidental duties are reserved to them.

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 26th day of July 1995.