

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31017  
Docket No. MW-28924  
95-3-89-3-327

The Third Division consisted of the regular members and in addition Referee Gil Vernon 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 Carrier violated the Agreement when it assigned outside forces (Inno-Cept Corporation) to repair and modify backhoe trailers including but not limited to trailer numbers TL 2130, TL 2013, EF 2018 and TL 2129 beginning March 2, 1988 (System Docket CR-3824).
- (2) The Carrier also violated the Agreement when the it did not give the General Chairman advance written notification of its intention to contract said work.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, furloughed Repairmen M. Gerber, S. Snisky, R. Hodle and D. Schlegel shall each be allowed pay at the repairman's rate for:

'Settlement sought: Repairmans rate: eight (8) hours each day claimed, from Monday to Friday (starting with March 2, 1988), at the straight time repairmans rate of pay. Also eight (8) hours each day claimed, Saturday, Sunday and all Holidays (starting with March 5, 1988) at the time and one half repairmans rate of pay. This settlement is for each of the men named in this claim and is continuing as per Rule 26 (f).'"

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 therein.

Parties to said dispute waived right of appearance at hearing thereon.

The claim before the Board contends that the Carrier's utilization of an outside contractor to repair trailers violates the Scope Rule of the basic Agreement. Indeed, this is the key issue since the Agreement requires notice and places other obligations on the Carriers if the work in question falls "within the scope of this Agreement."

The Board notes that the Scope Rule is not specific with regard to the work in question. Accordingly, it is well established that, given a general or essentially ambiguous Rule (as it relates to the work at bar), the Organization must demonstrate that they have historically and customarily done the work.

It is the opinion of the Board that the Organization has failed to sustain their burden. Other than mere assertion, the only evidence produced by them to show they have historically done the work, is documentation that Carrier forces did a one-time minor repair project on a specific class of trailer that lasted a relatively short period of time. This evidence falls far short of establishing a history and custom of repairing trailers. While the Organization need not show an exclusive practice, the "historically and customary" standard requires sufficient evidence to convince the Board that repair by Carrier forces was the usual and ordinary course of action. The evidence is insufficient in this regard, particularly when viewed in light of the contrary documentation provided by the Carrier.

AWARD

Claim denied.

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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.