Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31884
Docket No. MW-31328
97-3-93-3-267

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE:(
(St. Louis Southwestern Railway 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 (Asplundh Company) to perform Maintenance of Way work (cleaning right of way with the use of a brush cutter) between Lackland and Union, Missouri beginning February 21 through April 20, 1992 (System File MW-92-20-CB/MofW 92-89 SSW).

(2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with fifteen (15) days' advance written notice of its plan to contract out the above-described work in accordance with Article 33.

(3) As a consequence of the violations referred to in either Parts (1) and/or(2) above, Machine Operators K. W. Simmons and R. E. Hagan shall each be allowed three hundred thirty-six (336) hours' pay at their respective straight time rates."

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 were given due notice of hearing thereon.

The Organization's claim is that Carrier, without notice, contracted with Asplundh Company to clear right of way with a brush cutter between Lackland and Union, Missouri.

The Carrier's position is that the contractor crew used in this instance is but one of three such crews the Carrier contracts with annually "for removal of brush from areas where it has received citations from the...(FRA) for brush in wire lines or where trees or brush have become hazardous to the general public...."

Carrier argues further it does not have the type of equipment needed to perform the work, and that the contractor also treated many species of the trees along the right of way with a specific herbicide to prevent rapid regrowth.

The Carrier also argues that the Scope Rule does not encompass removing brush from signal wires. This fact has never been rebutted on the property. In this Board's view, the removal of brush and trees from signal wires is not conceived to be work normally expected of employees within the scope of the Organization's agreement.

The Organization has furnished numerous Awards in its favor resolving contracting out claims between this Carrier and this Organization. Only one involved brush cutting, and that was sustained when the Board was convinced that the Carrier's argument of specialized equipment was countered by two eye witnesses who testified the brush removal crew were using saws, axes, etc.; tools requiring no special talent or training.

The Carrier, on the other hand, furnished Third Division Award 31668 involving the same contractor working on another segment of Carrier's property. The Board found that the Carrier "has contracted out the work of weed and brush control to Asplundh since 1986...."

That finding coincides with Carrier's statement that it has annually contracted with Asplundh to remove brush and vegetation from its right of way. Surely from 1986 to this claim, if the work Asplundh was performing was in violation of the contract, at some time someone would have filed claim; but to date, this Board has not been so advised.

The Organization had the burden to prove that the contractor's crew in this instance was doing work that was in violation of its contract. In this Board's opinion, it did not.

As found in Third Division Award 31886, the Organization has failed to establish the bona fides of its contentions. The claim will be denied.

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 4th day of March 1997.