

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32018
Docket No. MW-31446
97-3-93-3-443**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Grand Trunk Western 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 (Lawn Service, Inc.) to perform right of way mowing work in the vicinity of the Edison Yard Office at Trenton, Michigan on May 4, 14, 21 and 29, 1992 (Carrier's File 8365-1-387 DTS).**
- (2) The Agreement was violated when the Carrier assigned an outside concern (Toledo Lawn Care) to perform right of way mowing work in the vicinity of the Lang Yard Administration Office Building at Toledo, Ohio on May 5, 12, 19 and 26, 1992 (Carrier's File 8365-1-386).**
- (3) The Agreement was violated when the Carrier assigned an outside concern (Toledo Lawn Care) to perform right of way mowing work in the vicinity of the Lang Yard Administration Office Building at Toledo, Ohio on June 2, 10, 17, 23, July 1 and 6, 1992 (Carrier's File 8365-1-392).**
- (4) The Agreement was violated when the Carrier assigned an outside concern (Lawn Care Services, Inc.) to perform right of way mowing work in the vicinity of the Edison Yard Office at Trenton, Michigan on June 7, 14, 21 and 28, and July 5, 1992 (Carrier's File 8365-1-393).**

- (5) The Agreement was further violated when the Carrier failed to give the General Chairman advance written notice of its plan to contract out the above-described right of way maintenance work.
- (6) As a consequence of the violations set forth in Parts (1) and/or (5) above, Claimants R. Rose, J. Boyle, M. Stamm and T. Neagley shall each be allowed four (4) hours' pay at their respective straight time rates.
- (7) As a consequence of the violations set forth in Parts (2) and/or (5) above, Claimants O. Rose and P. Sykes shall each be allowed four (4) hours' pay and Claimants B. Elmer, T. Neagley, M. DeCant and D. Thomas shall each be allowed two (2) hours' pay at their respective straight time rates.
- (8) As a consequence of the violations set forth in Parts (3) and/or (5) above, Claimant M. DeCant shall be allowed six (6) hours' pay, Claimants B. Elmer, R. Beavers, F. Hammac and O. Rose shall each be allowed four (4) hours' pay and Claimant T. Kowalski shall be allowed two (2) hours' pay at their respective straight time rates.
- (9) As a consequence of the violations set forth in Parts (4) and/or (5) above, Claimants T. Neagley, R. Rose, D. Thomas, J. Boyle and M. Stamm shall each be allowed four (4) hours' pay at their respective time and one-half 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.

It is undisputed that Carrier used outside contractors to mow the grass lawn around its yard offices as alleged in the four claims. Nor is it disputed that Carrier did not provide the General Chairman with advance notice of its plans in any of the claims. In addition, the text of the Organization's first appeal on the property also factually established that each of the Claimants was employed elsewhere and compensated by the Carrier on the claim dates.

A sharp disagreement exists, however, whether the work was covered by the Scope Rule. The Organization contends the work was exclusively reserved to the employees by Article 52 of the effective Agreement, which provides, in pertinent part, as follows:

“(b) Track Work:

All work in connection with the construction, maintenance or dismantling of roadway and track, such as ... mowing and cleaning, ... and all other work incident thereto, shall be track work and shall be performed by employees in the track Sub-Department.”

Carrier, in contrast, contended that lawn mowing was not within the scope of the Agreement.

Rule 52(b) itself does not precisely define the physical boundaries of the area to be considered “... roadway and track....” Third Division Award 31001 dealt with a virtually identical provision on another carrier and construed the language as excluding the type of lawn mowing involved here. The plain meaning of the words used in Rule 52(b) would suggest that lawn mowing around yard offices is not the same as mowing in connection with the construction, maintenance or dismantling of roadway and track.

The Organization, however, cites Third Division Award 29878, which involved these same parties, for a supporting application of Rule 52(b). That Award dealt with lawn mowing around the same Lang Yard Office involved in Claims 2 and 3 here. While it is true that scope coverage was found in that Award, a careful reading of the decision reveals that the Board found Rule 52(b) to be unclear as to its coverage. As a result, the Board turned to evidence of past practice to clear up the ambiguity. The Board found

that the Carrier had not refuted the statements about past performance proffered by employees during the handling of that matter on the property.

No such evidence is available in this record. After careful review of each of the four on-property records, we do not find any assertions that BMWWE represented employees ever performed the disputed work. Nor are there any statements by employees describing past performance. In short, we have no evidence available in these four claim records to resolve the assertion deadlock over the factual issue concerning the scope coverage of the work.

It is well settled that the Organization is the party that must shoulder the burden of proof in matters of this nature. On these claim records, we must find that it failed to do so.

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 6th day of May 1997.