

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35416
Docket No. MW-33169
01-3-96-3-602

The Third Division consisted of the regular members and in addition Referee Margo R. Newman 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 the Carrier assigned or otherwise permitted outside forces (Nittany Mountain Cleaners) to perform camp car attendant’s work (cleaning the A-B-H camp cars) in Huntingdon, Pennsylvania on March 13 through March 17, 1995 (System Docket MW-3891).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intention to contract out said work as required by the Scope Rule.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, furloughed Camp Car Attendants R. G. Shaffer, T. C. Bowser and R. A. Simpson shall each be allowed forty (40) hours’ pay at the camp car attendant’s straight time rate and they shall each receive credit for benefit and vacation purposes.”

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.

This claim involves the contracting out of pre-production season cleaning of camp cars on the claim dates in Huntingdon, Pennsylvania, and was filed on behalf of three furloughed Camp Car Attendants. There is no dispute that, during the production season, a major function of Camp Car Attendants is to keep the kitchen, dining and camp area of the camp cars in a clean and sanitary condition.

The Organization contends that the work in dispute is Scope-covered work because Camp Car Attendants are specifically listed in Rule 1 under the Track Department, and their position description contained in job postings identifies this type of cleaning work as belonging to them. It notes that the Organization need not prove exclusivity of performance for work to be Scope-covered, citing Special Board of Adjustment No. 1016, Award 9, and that the Carrier's admitted failure to provide advance written notice requires a monetary remedy, relying on Third Division Award 27012 among others. The Organization asserts that the Carrier failed to rebut its assertion that this type of work had been customarily performed by BMW employees.

The Carrier argues that the Organization failed to meet its burden of proving that employees ever performed this pre-production season cleaning of camp cars, thereby negating any claim that it is Scope-covered work or has been customarily performed by employees, relying on Third Division Award 33420. While the Carrier does not dispute that Camp Car Attendants clean camp cars during the production season, it contends that this extensive super-cleaning work requires special skills and equipment not available on the property and not normally performed by employees. The Carrier asserts that because this type of cleaning work has not been shown to fall within the Scope of the Agreement, it was permitted to contract it without notice to the Organization.

The language of the Scope provision of the Agreement does not specifically include the disputed cleaning work, and lists Camp Car Attendants' primary duties as "Assist Camp Cook." The Camp Cooks' duties are listed as "Prepare and serve camp meals." However, there is no doubt that Camp Car Attendants are responsible for keeping camp cars clean during the production season, and that such work falls within the Scope of the Agreement. The Carrier claims that this preseason super-cleaning work is different than the normal cleaning performed by Camp Car Attendants because it requires industrial

strength cleaners and disinfectants and specialized heavy equipment involving stripping, steaming and scouring which it does not possess and which employees do not have the skill to operate.

The issue in this case boils down to whether Camp Car Attendants normally and customarily (not exclusively) perform the preseason cleaning work involved so as to bring it within the Scope of the Agreement, thereby requiring advance written notice of contracting, or whether the work involved was substantially identical to production season cleaning which is admittedly covered by the Scope clause. The Organization has the burden of proving these material facts which are necessary to make out a prima facie claim of a Scope-Rule violation.

A careful review of the record convinces the Board that the Organization failed to meet that burden. This case is substantially similar to that considered by the Board in Third Division Award 35414, although the Carrier herein did not make the claim that it had always contracted this pre-production season work. It did clearly challenge the Scope coverage of this preseason cleaning work asserting that such work is different than normal cleaning, and that employees have never performed it. As noted in our decision in Third Division Award 35414, in such circumstance, it was incumbent upon the Organization to offer proof that Camp Car Attendants have customarily and historically performed this same type of work, and its failure to do so requires that the claim be denied. Third Division Awards 32343, 30515, 31605.

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 April, 2001.