

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37050
Docket No. MW-36199
04-3-00-3-396**

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(CSX Transportation, Inc. (former Toledo
(Terminal Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Murphy Construction Inc.) to mow weeds around buildings, fences, culverts and tracks at Walbridge Yards, Walbridge, Ohio commencing May 5, 1999 and continuing [System File 1081206399/12(99-0552) TTR].
- (2) The Agreement was violated when the Carrier assigned outside forces to mow weeds around buildings, fences, culverts and tracks at Presque Isle Docks and Lake Front, Docks commencing May 5, 1999 and continuing [System File 1081206299/12(99-0551)].
- (3) As a consequence of the violation referred to in Part (1) above, B&B Mechanics M. A. Weaver, D. B. Gurzynski, R. L. Hagemann, T. J. Agoston and L. J. Dannenberger shall each be allowed ' . . . forty (40) hours each from May 5, 1999 and continuing until claimant (sic) are permitted to perform this work. . . .
- (4) As a consequence of the violation referred to in Part (2) above, B&B Mechanics M. A. Weaver, D. B. Gurzynski, R. L.

Hagemann, T. J. Agoston and L. J. Dannenberger shall each be allowed ' . . . forty (40) hours each from May 5, 1999 and continuing until claimant (sic) are permitted to perform this work."

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.

Under date of February 10, 1999, the Carrier served notice of its intent to contract brush cutting, tree trimming and application of weed sprays at the Toledo Docks on the Hocking Seniority District in the Toledo Terminal on the Detroit Division. Said notice stated that it was necessary to contract the work "due to insufficient available forces to perform the work in a timely manner." The notice was discussed in conference with BMWV Vice Chairman H. Ezzell on February 19, 1999 and confirmed by his letter of February 25, 1999. We find in this record no support for the Organization's contention that the Carrier failed to comply with conditions precedent of good faith notice and discussion before subcontracting the work in question.

Beginning on May 5, 1999 and continuing, the Carrier retained two employees of Murphy Construction, Inc. of White House, Ohio, to perform weed control at Walbridge Yards in Walbridge, Ohio, and additionally three contractor employees to mow weeds around buildings, fences, culverts and track at the Presque Isle Docks and Lake Front Docks. The Organization filed Scope Rule violation

claims on behalf of Claimants M. A. Weaver, D. B. Gurzynski, R. L. Hagemann, T. J. Agoston and D. L. Dannenberger. Each of these Claimants has established seniority as a Mechanic (Carpenter) in the B&B Subdepartment on the Hocking Seniority District of the Detroit Division. On the dates involved in this dispute, they were regularly assigned and working Monday through Thursday as Carpenters, with Friday, Saturday, and Sunday designated as rest days.

The claims must be denied because the Organization's citation to Rule 35 ½ is de novo and it failed to make out a prima facie showing that the Claimants' rights under the Scope Rule were violated. The claims must be denied simply because there is no persuasive showing in this record that B&B Carpenters like these Claimants regularly and routinely performed the weed control work that they now claim by custom, practice and tradition reservation under the general Scope Rule of the controlling Agreement.

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 22nd day of June 2004.