PUBLIC LAW BOARD NO. 2556

Award No. 25

Case No. 31
File No. MW-389

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Railway Company

Statement of Claim: Claim on behalf of Foreman D. C. Carroll, Machine Operator Don Wertman, and Laborers L. Lamkin and Clarence Durcholz for all hours worked by a contractor in lime slurry injection beginning August 5, 1981.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 17, 1979, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

The instant claims were filed because Carrier had contracted out the work of lime slurry injection. Said injection is a method used to stabilize the roadbed in certain situations. It is used where less expensive stabilization does not appear feasible or where other methods have been tried and found wanting.

In the instant case the Organization's primary contention was that Carrier failed to notify the Organization in accordance with Rule 59 - Contracting Out, which, in part, reads:

> "Rule 59 (a). In the event that Carrier plans to contract out work within the scope of the applicable schedule agreement, the Carrier shall notify the General Chairman in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than 15 days prior thereto..."

Carrier asserted that it does not own the required equipment; that the work involved is specialized and its employees are not qualified to

perform such work, that there were several Third Division Awards rendered on this property favoring Carrier's right to contract out work and because it has always in the past required lime slurry injection work to be performed by a contractor, proceeded, in the instant case, to contract the work out.

Analysis of the record permits the conclusion that the facts herein preponderate in favor of the Carrier's position. It has been clearly established, by Board Award on this property, that the Scope Rule of the Agreement does not define the work to be performed by the employees listed therein and that Carrier has the right to contract out certain work. See Third Division Award No. 11598 (Dolnick), likewise No. 15185 (Ives) and No. 16609 (Devine) and our Board's Award Nos. 9 and 10 between the same parties.

The Organization has failed to demonstrate by probative evidence that the work contracted out is of the type that by tradition, custom and practice has been performed exclusively by employees covered by the Agreement.

The record shows to the contrary that it was not historically and customarily performed exclusively by M&W employees. Nor was it denied that there was a long established practice in contracting out the lime stabilization work.

Consequently, in the particular circumstances herein, Rule 59 (a) was not violated. There was no burden thereunder for Carrier to notify the General Chairman.

In the particular circumstance, the instant claims will be denied.

Award: Claims denied.

Bryce L. Hall, Employee Member

D. N. Ray, Carrier Member

Arthur T. Van Wart, Chairman
and Neutral Member

Issued September 10, 1983.