

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 7

Case No. 7

Referee Fred Blackwell

Carrier Member: R. O'Neill

Labor Member: W. E. LaRue

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim of the Brotherhood (CR-662) that:

(a) The Carrier violated the provisions of the Scheduled Agreement, effective February 1, 1982, when on July 5, 6, 7, 8, 11, 12, 13, 14, 15, 1983, it contracted repair work on Forklift V-5081 with Midstate Industrial Trucks, who is not covered by the scope of the agreement to perform said repairs.

(b) The Carrier further violated the provisions of the Scheduled Agreement, particularly the Scope Rule, Paragraph 2, in that it failed to notify the General Chairman involved of its intention to contract said repairs.

(c) Division Repairman A. G. Edgell, being available and qualified to perform said repairs, be compensated for the total hours repairs were made, 80 hours at his respective straight time rate of pay.

FINDINGS:

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

OPINION

This case arises at Canton, Ohio, whereat, while reg-

ularly employed as a Repairman at the Carrier's Maintenance of Way Repair Shop, the Claimant submitted a time claim dated September 2, 1983 on the basis of allegations that the Carrier's action of contracting the repair of a forklift machine to an outside company, Midstate Industrial Trucks, was violative of his rights under the Scope Rule and Rule 1 of the parties' Agreement.

In remedy of the alleged violation the Claimant requests compensation for eighty (80) straight time hours for the repair work performed by Midstate Industrial Trucks.

The record reflects that prior to July 1983 the Claimant had performed necessary repair work on a Clark Forklift Truck, which the Carrier leased for work at its Maintenance of Way Repair Shop, Canton, Ohio. In July 1983 the forklift machine developed mechanical problems relating to its mast, brakes, and transmission. On or about July 3 the Claimant performed repair work on the forklift truck, but the Carrier personnel decided that the truck was not yet in a satisfactory condition for return to service. The forklift was thus sent to an authorized Clark dealer in the area, Midstate Industrial Trucks, where repairs were performed on July 8, 11, and 15, 1983.

The Carrier opposes the claims on the grounds (1) that the work of repairing the leased forklift truck did not accrue to the Claimant's craft under the scope of the confronting Agreement; (2) that the forklift was sent off the property for repairs after the Claimant had tried and failed to make the repairs satisfactor-

ily; and (3) that even if the claim is found to be meritorious, the Claimant would not be entitled to a compensatory remedy because he was on duty and under pay when the outsider performed the disputed work.

Both parties called attention to prior Third Division Awards in support of their positions in the case.

The Scope Rule in Rule 1 of the Agreement provide as follows:

"SCOPE

These rules shall be the agreement between Consolidated Rail Corporation (excluding Altoona Shops) and its employees of the classifications herein set forth represented by the Brotherhood of Maintenance of Way Employees, engaged in work generally recognized as Maintenance of Way work, such as, inspection, construction, repair and maintenance of water facilities, bridges, culverts, buildings and other structures, tracks, fences and roadbed, and work which, as of the effective date of this Agreement, was being performed by these employees, and shall govern the rates of pay, rules and working conditions of such employees.

In the event the Company plans to contract out work within the scope of this Agreement, except in emergencies, the Company shall notify the General Chairman involved, in writing, as far in advance of the date of the contracting transaction as is practicable and in any event not less than fifteen (15) days prior thereto. 'Emergencies' applies to fires, floods, heavy snow and like circumstances.

RULE 1 - SENIORITY CLASSES

The seniority classes and primary duties of each class are:

Track Department

D. Repairman Roster:

2. Repairman - Repair tools, machinery and equipment."

After due study of the foregoing and of the whole record,

inclusive of the parties' arguments in support of their respective positions in the case, the Board concludes that the record does not establish that the forklift was sent to the outside company because of the Claimant's inability to effect the needed repairs satisfactorily; and that the subject repair work was within the scope of the confronting Agreement. Therefore, the requirement of fifteen (15) days advance notice of a contracting transaction, set out in the second paragraph of the Scope provision, was applicable to the Carrier action of contracting the repair of the forklift truck to Midstate Industrial Trucks. The Carrier violated this notice requirement and thereby became liable to the Claimant for the deprivation of his opportunity to perform the disputed repair work. See Third Division Award No. 19899 (08-08-73) and Third Division Award No. 20633 (03-07-75).

As regards remedy, the record reflects that the repair work of Midstate Industrial Trucks amounted to thirty-seven (37) hours and accordingly, the claim will be sustained on this basis.

AWARD:

Claim sustained to the extent that the Carrier is required to compensate the Claimant for thirty-seven straight time hours.

The Carrier shall comply with this Award within thirty (30) days from the date hereof.

BY ORDER OF PUBLIC LAW BOARD NO. 3781.

P.L. Board No. 3781 - Award No. 7, Case No. 7

Fred Blackwell  
Fred Blackwell, Neutral Member

R. O'Neill  
R. O'Neill, Carrier Member

W. E. LaRue  
W. E. LaRue, Labor Member

Executed on Feb. 12, 1986.