SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 141
CASE NO. 141

PARTIES TO
THE DISPUTE: Brotherhood of Maintenance of Way Employes

vs.

Consolidated Rail Corporation

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained

DATE: July 22, 2001

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned outside forces to install six hundred feet (600') of guard rail around the Big Four Car Shop at Avon Yard, Indianapolis, Indiana on July 13, 1995 (System Docket MW-4314).

(2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper advance written notice of its intention to contract out said work and discuss the matter in good faith as required by the Scope Rule.

(3) As a consequence of the violation referred to in Parts (1) and/or (2) above, B&B employes J. Kile, J. Bukovack, W. Hackleman, C. Wyatt, E. Bryan, D. Deakins and K. Abel shall each be allowed eight (8) hours' pay at their respective pro rata rates, but not less than the B&B mechanic's rate of pay."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, fmds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The primary point of conflict in this matter is the issue of scope coverage. Carrier maintains the disputed work did not accrue to the employees. As a result, Carrier contends it was not required to provide the Organization notice of its intention to contract the work. While Carrier did provide notice, it says it did so only as a matter of informational courtesy.

We note the installation of guard rail is not explicitly mentioned in the applicable scope rule. The Addendum to Award No. 9 of this Special Board of Adjustment No. 1016 determined that to show scope coverage in such situations, the Organization has the burden "... to show that the work was 'customarily and traditionally' performed by MW employees." Award No. 9 was issued in 199 1

and interpreted scope language identical to that contained in the effective Agreement.

After careful review of the instant record, we are compelled to find that scope coverage has been sufficient established. In its first two responses during development of the on-property record, Carrier admitted that the MW employees had performed guard rail installation in the past. In addition, to buttress its assertions of past performance, the Organization provided signed statements from two employees who had performed such work. Although Carrier asserted that the disputed work had been performed "predominantly" in the past by contractors, the Organization disagreed. Despite having its assertion refuted, the Carrier did not provide any actual evidence of past performance by contractors. On this record, therefore, we have no evidence that guard rail installation has been performed by anyone other than scope covered employees. Thus, the record satisfies the Organization's burden of proof.

In light of the foregoing, we must also find that the Carrier violated the applicable notice provisions. While Canier did give notice by letter dated June 30, 1995, the contractor performed the work on July 13, 1995 -this is less than the 15-day minimum time frame mandated by the notice provision. As a result, the work was completed before the discussions contemplated by the Agreement took place.

Carrier also maintained that Claimants were under pay on the Claim date.. In addition, it noted that one of the Claimants was actually on vacation, thereby not available, on the date the work was performed.

We find the Carrier's remedy contentions lack merit. It was undisputed that Claimants were to be furloughed at the end of their work season. Had they been assigned the work in question, it is evident that they could have worked additional time. Thus, they lost a work opportunity. Moreover, if Carrier had complied fully with the notice requirement, the work would not have been performed on July 13th, when one of the Claimants was on vacation. There is also no showing that Carrier could not have scheduled the work around any vacation periods.

Finally, although the Carrier alleged the lack of required equipment in its notice, when challenged to identify the missing equipment, Carrier failed to do so.

For the foregoing reasons, we must sustain the Claim.

AWARD:

The Claim is sustained.

Gerald E. Wallin, Chairman
and Neutral Member

R. C. Robinson,
Organization Member

D. L. Kerby,
Carrier Member