

NATIONAL RAILROAD ADJUSTMENT BOARD  
FOURTH DIVISION

Award No. 5077

Docket No. 5066

01-4-00-4-10

The Fourth Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

(Transportation Communications International Union  
PARTIES TO DISPUTE: (  
(Duluth, Missabe and Iron Range Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization that:

1. Carrier violated the TCU Ore Dock Employees' Agreement at Two Harbors, MN on Monday, January 6, 1997, when it required and/or permitted a person (not covered by the Ore Dock Employees Agreement) at the Two Harbors Ore Docks to perform the work of replacing a cylinder head on the MX-2 right engine.
2. Carrier shall now be required to compensate the senior available qualified extra or unassigned employee, without forty (40) hours of work for the week, one day's pay (eight hours) at pro rata rate and four (4) hours pay at the punitive rate of the Ore Dock Mechanics position for Monday, January 6, 1997 which he would have received had he been properly called."

FINDINGS:

The Fourth 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.

The Carrier owns and operates two separate ore docks located at Duluth and Two Harbors, Minnesota. At both sites iron ore taconite pellets are transferred from rail cars to freighter ships that haul the material to steel plants located at more easterly ports on the lower Great Lakes. Although each dock is operated as a separate and independent profit center, they enjoy common ownership and the employees at both locations who perform the actual transfer operations and do the maintenance and repair of the equipment used in pellet loading are covered by the same Agreement.

When the cylinder head on the right engine of the MX-2 reclaimer needed to be replaced on January 6, 1997, the Carrier contracted with General Diesel - Hibbing for the needed repairs. Using an employee not covered by the Agreement assisted by a covered Ore Dock Mechanic, General Diesel - Hibbing replaced the cylinder head on the Carrier's property at Two Harbors over a period of 12 consecutive hours.

In the claim, the Organization maintains that the disputed work in the past has been regularly performed by Ore Dock Mechanics in accordance with the Scope provisions of the parties' Agreement. After its January 18, 1997 claim for one day's pay at straight time and four hours' at time and one-half was rejected in handling on the property it was presented to the Board for consideration.

In its letter of denial dated January 29, 1997, the Carrier asserted in part that "[t]his type of work has been performed before by vendor support. Please see enclosed copies of this type of work dating back to 1985 performed by vendor support. . . ." By letter of February 8, 1997 appealing that decision, the Local Chairman, among other matters, pointed out that "there were no enclosed copies of any documentation with Manager Van Brunt's denial to support his decision." When Superintendent J. D. Paschke denied the Organization's appeal on March 10, 1997, he stated "[T]he enclosures missing from the denial letter were an oversight. You should have received them in a subsequent mailing." Notably, the Superintendent did not send the missing enclosures along with his declination letter. The Organization's unchallenged summary of the parties' claims conference held in Duluth, Minnesota, on March 16, 1998 confirms that the Carrier had not yet presented any evidence documenting its contention that outside contractors had routinely come on the property for machine repair over the years without objection. Based on the record before us, no such proof was ever submitted, and none appears in the record before us.

The cases submitted for our review establish inarguably that the Scope Rule at issue is of the "Positions and Work" type not requiring that the Organization prove system-wide exclusivity as a condition of establishing a Scope Rule violation. Accordingly, the Carrier's contention that Rule 1 (b) is a "General" Scope Rule is unavailing. For that reason, and, more importantly, given the Carrier's failure to document its assertion of a longstanding past practice of subcontracting analogous work, the claim must be sustained.

**AWARD**

Claim sustained.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Fourth Division

Dated at Chicago, Illinois, this 21st day of June, 2001.