

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

Parties to Dispute: (United Steelworkers of America
(
(Lake Terminal Railroad Company

Dispute: Claim of Employees:

- (1) This time claim is instituted on behalf of the following employees: M. Santiago #553; L. Julia #564; J. Johnson #1425; and V. Bellan #561; who claim their rights to lay concrete block, install the ceiling and insulation, and put up paneling at the Maintenance of Way Foremen's Building for more Foremen's offices, were violated when the work was contracted out and begun on July 19, 1978 and was finished on August 7, 1978. This is a violation of (1) a long existing practice and (2) Rule 17 of the current agreement.
- (2) As penalty for the violations enumerated above, it is requested the Carrier compensate the claimants named above eight (8) hours pay at their respective rates of pay for each day that this violation existed, in addition to all other earnings.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

On July 7 and 10, 1978, carrier let two subcontracts for work to be performed at the Maintenance of Way Department's Foreman's Building. The subcontract was for the construction of cement block exterior walls, finishing and panelling interior walls, roofing, insulation, installation of windows and doors, etc. The electrical work involved in the construction was performed by carrier's employes. The organization alleges that by contracting out this work, carrier violated the schedule agreement. It failed to notify the union that it intended to contract out this work and the work in question is the organization's work by rule and cannot be contracted out with the agreement of the union.

Rule 17 reads as follows:

"Contracting Out

Except for minor transactions not of a recurring nature, it is the intention of the carrier to give the union advance notice of the contracting out of work of a type currently or customarily performed by its employees represented by the United Steelworkers of America, and to meet with the union when requested to do so, for the purpose of reviewing whether the use of the employees to perform such work would be equivalent to the use of a contractor."

Carrier contends that it inadvertently failed to notify the union of its intention to contract out the building work. At any rate, all organization members were fully employed. Even if the union had been notified and been able to discuss the decision, it would have made no difference. The work would have been contracted out in any event.

Rule 17 clearly requires that when carrier intends to contract out work, it must notify the union and discuss the contracting out if the union requests such a discussion. Carrier is not obligated to obtain the union's agreement to contract out, but it must give the union an opportunity to talk about the situation and try to persuade carrier, if it chooses, that the work should be done by carrier employees. Failure of carrier to give notification and enter into discussion, if requested, is a schedule agreement violation and is not condoned by this board.

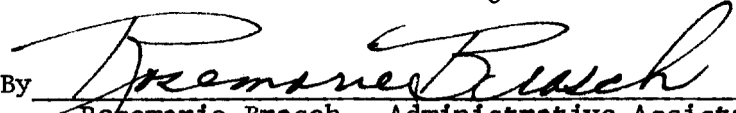
The issue of carrier's failure to notify the union when it intends to subcontract has been adjudicated before this Board and Special Board of Adjustment 570 on many occasions. Where carrier is required to give notification and fails to do so, all jurisdictions have declared it an agreement violation. The problem then arises as to what is the proper remedy for such a violation. This Division, as well as the Third Division, has taken the position that full employment of claimants has generally mitigated against the payment of such claims as those being requested here. This Board has no justification for modifying that position in this case.

A W A R D

Claim sustained as to Rule 17. Claim denied as to payment requested for claimants.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of October, 1981.