Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13183
Docket No. 13026-T
97-2-95-2-50

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers' International Association
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"1. The Carrier violated the provisions of the current and controlling agreement, and in particular Rule 4-0-1 of said agreement, and for the Carrier's failure to notify the Organization of contracting out of work, when they improperly assigned the installation of chain link fencing and all accompanying hardware and connections to a private contractor, Able Fencing, for August 1993.

2. That accordingly, the Carrier be required to compensate Sheet Metal Workers R. T. Shonkwiler and M. J. Casadonte in the amount of 288 hours pay, equally divided amongst them, for the above listed violations. Also, that they additionally be compensated in the amount allowed under the agreement for failure to notify the Organization of the Carrier's intent."

FINDINGS:

The Second 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.

As Third Party in Interest, the Brotherhood of Maintenance of Way Employes (BMWE) was advised of the pendency of this dispute and chose to file a Submission with the Board.

This claim arises from Carrier's August 1993 assignment of the installation of chain link fencing to an outside contractor without prior notice to the Organization. The record reflects that notice of Carrier's intent to contract this work was sent to the BMWE two days prior to the commencement of the work, and that a claim filed by the BMWE was paid based upon the untimeliness of the notice given.

The Organization argues that the work in question is encompassed by its classification of work rule, and that the installation of cyclone fencing has historically been a joint effort between it and the BMWE. The Organization contends that it was similarly entitled to notice of Carrier's intent to contract out this work, and that its claim for lack of notice must also be paid under Article II of the September 25, 1964 National Agreement.

Carrier and the BMWE argue that routine fencing work is specifically encompassed within the BMWE Scope Rule and reserved to them by customary practice, and that the Organization has failed to meet its burden of proving otherwise. Carrier contends that it decided to contract out this work since its scope and magnitude made it other than routine, and the fact that it paid the BMWE's claim due to a procedural issue is irrelevant to this claim. Carrier notes that any issue of the requirement of Article II of the September 25, 1964 National Agreement is not properly before this Board and was not raised on the property. Carrier also argues that Claimants suffered no loss of earnings and were either fully employed or on vacation at the relevant time.

A careful review of the record convinces the Board that the Organization has failed to sustain its burden of proving that it was entitled to notice in the instant case. We find no specific reference to fencing work within its classification of work rule. On the other hand, there is both specific reference to fencing work within the BMWE Scope Rule, as well as a Letter of Agreement between Carrier's former Vice President of Labor Relations and BMWE General Chairman dated April 24, 1989 indicating that routine fencing work is to be performed by BMWE employees. Further, Carrier and

the BMWE rely upon an over 30 year practice of such employees customarily performing routine fencing work.

When this evidence is compared with the letter from Pittsburgh Division Engineer dated September 19, 1991 submitted in response to a different claim as sole support for the Organization's contention that installation of cyclone fencing has historically been a joint effort between the BMWE and the Organization on that Division, we are unconvinced that such evidence sufficiently rebuts clear and unambiguous contract language and evidence of a lengthy practice in compliance with such language. Accordingly, we find that the Organization failed to sustain its burden of proving this claim.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 23rd day of December 1997.