Award No. 18287
Docket No. MW-18669

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SEABOARD COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when, without an understanding having been reached between the Assistant Vice President, Engineering and Maintenance of Way and the General Chairman as required by Rule 2, it assigned the work of modifying offices in the Druid Street Freight Station, Jacksonville, Florida to outside forces. (System File 12-2/C-4.)

(2) Each employe* assigned to the carpenter forces on the Jacksonville-Tampa Divisions be allowed pay at their respective straight time rates of pay for an equal proportionate share of the total number of man hours expended by outside forces in performing the work referred to within Part (1) of this claim.

*Foremen	Assistant Foreman
C. J. Stephens	R. W. Benson
M. A. Bowen	
W. J. Pitts	

Carpenters	Carpenter Helpers
J. E. Brooker	T. D. Rosier
T. B. Stanley	W. W. Kingsley
M. P. Vetzel	J. C. Allart
T. R. Messer	S. Martinez
S. Rogers	J. D. Elkes
J. R. Graham	D. E. Brazil
J. D. Bellamy	E. R. Miller
A. Oladell	H. G. Davis
W. E. Crosby	R. Carmenite
L. W. Goodbread	W. C. Burch
A. E. Moore, Jr.	Charles Booth
R. D. Talkington	
S. B. Matthews	
Joe Guggino	

all interpretations of the old agreement are carried forward into the new unless there be a declared intent to the contrary. . . .'

Further support of our position as to the correct interpretation of Rule 2 is the fact that no penalty claims such as you filed were filed by any other group employes in the Bridge and Building Subdepartment or any other Subdepartment for any part of the project.

Aside from the fact that this project was one that was properly contracted, all of the claimants were fully employed prior to, during and subsequent to the time the contractor performed the work on this project on other important work, and no B&B employes were furloughed. Therefore, as held in Third Division Award 10963, to sustain the claim would be 'giving the MW employes a windfall.' Such holding has been followed in numerous subsequent awards, among which are Third Division Awards 14963, 15062, 13958, 13171 and Second Division Awards 3967, 4254, 5180.

As you have been previously advised, the Carrier has not allowed its Maintenance of Way forces to deteriorate or become depleted for the purpose of contracting work, which fact is supported by employment figures furnished you. We have made an effort to employ men in that Department, and such efforts are still being made, as borne out by the fact that for the three-month period just ended, 467 applicants were sent to the doctor for examination, of which 152 are actually at work, 44 with approval of applications pending and 46 who either quit or decided they did not want to go to work.

There was no violation of the agreement in this case and no justification or support for the penalty claim filed and appealed by you. Therefore, the claim is declined."

This claim was discussed in conference October 21, 1969, along with some other claims, as confirmed by letter of Carrier's highest designated officer dated November 28, 1969, in which he advised the General Chairman, "You did not present anything new in support of these claims and you were advised we saw no reason for changing our decisions in these cases."

Subsequently, the Carrier's highest designated officer granted a sixty-day extension of the time limit in the instant case.

OPINION OF BOARD: Effective July 1, 1967, the Atlantic Coast Line Railroad Company and the Seaboard Air Line Railroad Company merged and formed the Seaboard Coast Line Railroad Company. On May 23, 1968, new working agreement covering Maintenance of Way employes of the merged company was executed, to become effective July 1, 1968. Lifted from the former ACL Agreement and incorporated **verbatim** into the new agreement was Rule 13 covering the contracting out of work. It became Rule 2 of the new agreement and reads:

"This Agreement requires that **all maintenance work** in the Maintenance of Way and Structures Department is to be performed by employes subject to this Agreement **except it is recognized that, in**

specific instances, certain work that is to be performed requires special skills not possessed by the employes and the use of special equipment not owned by or available to the Carrier. In such instances, the Assistant Vice-President, Engineering and Maintenance of Way, and the General Chairman will confer and reach an understanding setting forth the conditions under which the work will be performed.

It is further understood and agreed that although **it is not the intention of the Company to contract construction work** in the Maintenance of Way and Structures Department **when Company forces and equipment are adequate and available, it is recognized that, under certain circumstances, contracting of such work may be necessary. In such instances, the Assistant Vice-President, Engineering and Maintenance of Way, and the General Chairman will confer and reach an understanding setting forth the conditions under which the work will be performed.** In such instances, consideration will be given by the Assistant Vice-President, Engineering and Maintenance of Way, and the General Chairman to performing by contract the grading, drainage and certain other Structures Department work of magnitude or requiring special skills not possessed by the employes, and the use of special equipment not owned by or available to the Carrier and to performing track work and other Structures Department work with Company forces." (Emphasis ours.)

The parties are in agreement that interpretations and applications of Rule 2 of the new agreement, hereinafter called the Agreement, carry over from Rule 13 of the ACL agreement.

Under date of September 26, 1968, Carrier's Assistant Vice-President, Engineering and Maintenance of Way, wrote the General MW Chairmen — there were two:

"We have received authority to make certain modifications in the freight station at Druid Street in Jacksonville, Florida.

This work consists of approximately 6,600 square yards of paving, removal of approximately 1,500 feet of track, construction of 23 small triangular reinforced concrete platforms to be poured against the track side of the station to convert it into a saw-tooth truck loading dock, and a steel frame extension along 500 feet of the existing canopy roof to protect the trucking area. There will be, in addition to this, a minor amount of changing to the office at the freight station.

It is our intention to contract this project inasmuch as this work is work in which **we do not have sufficient qualified men** available to accomplish, unless we defer important work which these forces are engaged in at this time." (Emphasis ours.)

The contention of Carrier is that:

"The letter of September 26, 1968, to General Chairman Winstead and Harris was in accordance with the procedure followed in such contracting cases under the contracting of work rule. **No reply or exception thereto being received from either General Chairman, the usual procedure if the proposed contracting was not satisfactory, the**

entire project was contracted to Danlee Construction Company, Jacksonville, Florida, on October 30, 1968." (Emphasis ours.)

Petitioner's Claim is that Carrier violated Rule 2 when it contracted out the work "without an understanding having been reached between the Assistant Vice-President, Engineering and Maintenance of Way, and the General Chairman, setting forth the conditions under which the work would be performed."

Rule 2, in unambiguous terms, prescribes as an indispensable condition precedent to Carrier contracting out work covered by the Agreement that "the Assistant Vice-President, Engineering and Maintenance of Way, and the General Chairman, **will confer and reach an understanding setting forth the conditions under which the work will be performed.**" It is a principle of contract construction that where the terms of a contract are unambiguous any party has the right to insist upon compliance with its terms. Past practice to the contrary, if any, is material and relevant in the interpretation and application of the contract only when its terms are ambiguous. It is also a principle of contract construction that expressed exceptions to general provisions of a contract must be strictly complied with and no other exceptions may be inferred. Were we to digress from those principles we would exceed our jurisdiction.

In Award **13461** in which we interpreted Rule 13 in the former Atlantic Coast Line agreement — Rule 2 in the confronting Agreement — we held:

> "There is no relevant factual dispute in this case. Carrier concedes that the involved work was contracted out and does not deny Organization's claim that the contracting out was done without prior conference and negotiation with the Organization. If the involved work was reserved exclusively to the Organization, **such contracting out without prior conference was a clear violation of the explicit terms of Rule 13**; Carrier's arguments about the unavailability of proper safe equipment are not a valid defense to the claim." (Emphasis ours.)

That finding is: (1) squarely in point; and (2) is dispositive of the issue on the merits in the instant case. See, also Award **15333.** We, therefore, will sustain paragraph 1 of the Claim.

As to paragraph 2 of the Claim, Carrier contends it should be denied because Claimant suffered no loss (compensation) in that they worked during the entire period in which the contracted out work was being performed.

That the contracted out work was of a nature covered by the Agreement was recognized by Carrier when it sent its letter of September 26, 1968, **supra,** to the General Chairmen. Therefore, the work and its emoluments was vested in Claimants and remained so vested unless and until Carrier complied with the mandatory procedures prescribed in Rule 2. Carrier's violation of the Rule damaged Claimants in that it wrongfully divested Claimants of contractual rights. For reasons stated in the following Awards we will sustain paragraph 2 of the Claim: Awards No. 11937, 12785, 13832, 14004, 15689, 15888, 16009, 16430, 16520, 16521, 16608, 16734, 16796, 16830, 17093, 17108, 17319 and 17931.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November, 1970.

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