Award No. 18397

Docket No. MW-18626

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, 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 contracted out certain track work at Pompano Beach, Miami Plantation and Winter Haven, Florida.
(System File 12-2/C-4.)

(2) The members* of Extra Gang Forces 8701, 8743 and 8700 and/or their successors each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man hours consumed by outside forces in the performance of the work referred to in Part (1) of this claim.

(*) Foremen	Cooks
G. A. Rish	E. Giles
S. A. Browning	J. F. Montgomery
P. T. Small	W. L. Chisolm
Trackmen	**Trackmen**
A. Williams	W. Walker, Jr.
S. Guess, Jr.	R. Moment
S. Howard	K. W. Phillips
M. Weaver	J. M. Ward
D. Nixon	D. Johnson
D. Bernett	J. Shephard
D. Marshall	E. Baker
C. Hines	E. R. Bamberg
A. Jefferson	G. W. Dinkins
W. Walker No. 1	E. Akins
L. Gaskins No. 1	J. Hall
W. E. Gathers	R. T. Forde
L. T. Lee	L. Gaskins
C. L. Morrow	J. R. Smith
	L. Priester

Such appeal was discussed in conference with General Chairman Winstead on March 19, 1969, and decision rendered by Carrier's highest designated officer on March 24, 1969, as per copy attached as Carrier's Exhibit D.

NOTE: Letter issued by SCL President Rice under date of January 10, 1968, referred to in next above cited letter, is attached as Carrier's Exhibit E.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute is one in a series concerning Rule 2 of the July 2, 1968, Agreement between these parties. It is the second paragraph of Rule 2, Section 1 which is in question:

> "It is further understood and agreed that although it is not the intention of the Company to construct 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. . . .**" (Emphasis ours.)

This Board has ruled in four other disputes concerning these same parties and rule. There are two leading awards, 18365 and 18287.

They were sustained. But in none of those cases did the parties have a conference as required in Rule 2.

On July 25, 1968, Carrier's Assistant Vice President for Engineering and Maintenance of Way wrote to the General Chairmen, advising them that the Carrier had been requested to make "extensive track changes" at a plant, and the "time limit of September 1" had been set for completion of the work.

It was the Carrier's position that "we do not have adequate and available forces or equipment to undertake this construction" and "under the circumstances, we propose to undertake this work by contract."

On July 30, 1968, General Chairman Winstead acknowledged the letter of the 25th:

> "I am sure that Bordo Products Company did not decide overnight to make this expansion of their plant facilities but that they have studied this matter and anticipated such a change over a period of time. 'Inasmuch as we have experienced employes who can perform the work outlined in your letter, it will not be agreeable with us for you to let this work to outside contractors . . .'"

Carrier wrote on July 22, 1968, concerning two other proposed contracts and General Chairman Winstead advised on July 30, 1968, that he did not agree.

On August 2, 1968, conference was held between General Chairman Winstead and Chief Engineer Clark and Senior Assistant Chief Engineer Ward for discussion of the three proposed contracts.

It is undisputed that the General Chairman ended the conference saying he would "reconsider the matter" and advise later.

On August 7, five days later, Carrier's officer phoned Mr. Winstead, who, we are told by Carrier, was "noncommittal." Following the telephone conversation, Carrier wrote the General Chairman again, outlining the projects and stating again the time limit.

On August 12, 10 days after the conference and five days after the letter was mailed, work on one project was started and on August 16 the other two contracts were awarded.

It is the Carrier's position that this correspondence and the conference satisfies the demands of Rule 2.

Award 18365 (Ritter) says:

> ". . . Carrier violated the Agreement when it failed to call a conference between the Assistant Vice-President, Engineering and Maintenance of Way and the General Chairman in an effort to reach an understanding as required. Failure to call such a conference prior to contracting out the involved work constituted an arbitrary and unilateral act by Carrier contrary to the Agreement. . . ."

Both parties, in the case before us, concede that to the extent a conference was held this dispute differs from Award 18365. However, the Organization contends that the rule further requires resolution of the disagreement between the General Chairman and the Carrier before the contract can be let.

In Award 18287 (Dorsey) this Board said:

> "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.' "

Rule 2 of the Agreement was Rule 13 of Atlantic Coast Line prior to merger of the ACL and Seaboard Coast Line. Award 18287 cites Award 13461 which interpreted Rule 13 of the ACL — Rule 2 in the Agreement before us. That quotation follows:

> "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.)

It would appear that in all of the five cases which have gone before, the Board needed only to find that no conference was held in order to sustain the claims.

Carrier wrote the General Chairman of its intention, then, through representatives of the designated officer, conferred with the Organization. The result of this conference was the General Chairman's response that he would reconsider.

The General Chairman did not reply, and within five days he was called and written. Again he did not reply and the work was started 10 days after the conference.

The demand for so quick a decision and the restrictive time limits placed upon the Organization's officer could be questioned with reason.

But neither does it stand the Organization in good stead to have been afforded the contractual demands of conference and negotiations and to apparently forfeit them by non-reply.

Technically, the Carrier sought to "confer and reach an understanding" as the rule demands. The Organization did confer, but did not follow the path toward reaching an understanding.

Under the circumstances of this situation we find that the Carrier technically met its requirements; that the Organization failed to pursue the opportunities afforded it.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of February, 1971.

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