Award No. 18716
Docket No. MW-19250

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it assigned the work of overhauling the motor on Ballast Drainage Car No. 4 to outside forces. (System File ILL-47-R-69/Case 661)

(2) Roadway Machine Department Repairmen W. F. Ferry, B. J. Thorpe, C. Matthews, P. E. Ring, G. R. Hutton, R. Issac, C. A. Peeler and J. L. Woodcock each be allowed pay at their respective straight time rate for an equal proportionate share of the total number of man hours expended by outside forces in the performance of the work referred to within Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The claimants are regularly assigned and fully qualified repairmen within Group 2 of the Carrier's Roadway Machine Department. Employes within this classification have traditionally and historically been assigned to and have performed the work of overhauling, repairing and maintaining the Carrier's roadway equipment.

On February 10, 1969, Claimant Matthews was assigned to perform the work of removing the diesel engine from Ballast Drainage Car No. 4 and to deliver same to Illinois Road Equipment Company in Springfield, Illinois, to be completely overhauled. The outside forces, who have no seniority rights whatsoever within the scope of this Agreement, performed all of the work in connection with the overhaul of the engine and, on October 12, 1969 it was returned to the Carrier. Claimant Matthews was assigned to perform the work of reinstalling same in the ballast drainage car.

The Carrier did not notify the undersigned General Chairman of its desire to assign this work to outside forces as it is required to do under the provisions of Article IV of the May 17, 1968 National Agreement which reads:

"In the event a carrier plans to contract out work within the scope of the applicable schedule agreement, the carrier shall notify the General Chairman of the organization involved in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than 15 days prior thereto.

past. Further, since the parties agree that the claimants could not have performed all the work required, the company contends it would have been inefficient, impractical, and unnecessary to subdivide the work into small segments to determine which could be performed by company forces. The work subcontracted should be considered as a whole. The company also contends that since the claimants were fully employed during the claim period and suffered no monetary loss, there is no basis for the moentary claim.

The issues are whether the work is covered by the scope of the Maintenance of Way Agreement is exclusively reserved to motor car repairmen. If so, is the company required to subdivide the work into small segments and assign company forces to those portions they are able to perform, or may the company subcontract the entire project as a whole? Finally, the Board must determine whether the claimants are entitled to any additional compensation and, if so, how much.

The correspondence is attached as Company's Exhibit A.

(Exhibits not reproduced.)

OPINION OF BOARD: In its submission to this Board the Petitioner contends that the Carrier violated the provisions of Article IV of the May 17, 1968 National Agreement by failure to notify the General Chairman in advance of its intention to contract out the work involved herein.

The Carrier Member of the Board contends that as the alleged violation of Article IV of the National Agreement of May 17, 1968, was not raised in the handling of the dispute on the property, the claim should be dismissed. However, as the Carrier took no exception to the Organization's reliance upon Article IV of the National Agreement of May 17, 1968 in its submission to the Board, even though it had an opportunity to do so in its rebuttal statement, the contention of the Carrier Member in this respect is rejected. The contention raised by the Carrier Member is, in essence, a procedural defense which could have been and was waived by the Carrier.

As to the merits of the dispute, the Carrier contends that the Petitioner has not proved that the work involved is exclusively reserved to Maintenance of Way employes, and that the contracting of the work involved was in accordance with prior Awards of the Division involving the same parties. In this respect we adopt the following from Award 18305 (Dugan), which was affirmed in Award 18687 (Rimer):

> "The first paragraph of said Article IV deals with the contracting out of work 'within the scope of the applicable schedule agreement.' It does not say the contracting out of work reserved exclusively to a craft by history, custom and tradition. This Board is not empowered to add to, subtract from, or alter an existing agreement. We therefore conclude that inasmuch as Maintenance of Way Employes have in the past performed such work as is in dispute here, then said work being within the scope of the applicable Agreement before us, Carrier violated the terms thereof by failing to notify the General Chairman within 15 days prior to the contracting out of said work. In reaching this conclusion, we are not asserting that the work here in question cannot be contracted out later after the giving of the required notice. We are only saying that since the work in question

came within the scope of the Maintenance of Way Agreement, Carrier was obligated to give said advance notice. Failing to do so, Carrier violated the terms of Article IV of the May 17, 1968 National Agreement governing the parties to this dispute."

For the limited purpose of providing notice to the General Chairman we find that the Carrier violated Article IV of the National Agreement of May 17, 1968. However, as it is not shown that Claimants suffered any pecuniary loss, we will likewise follow Awards 18305 and 18687 and deny Part (2) of the Claim.

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 violated as set forth in Opinion.

AWARD

Part (1) if claim is sustained.

Part (2) of claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1971.

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