



Award No. 18860
Docket No. MW-19089

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when, without prior notice to General Chairman M. R. Martin as required by Article IV of the May 17, 1968 National Agreement it assigned the work of erecting a Car Department building at Tacoma, Washington to outside forces. (System File D-1666/Grievance 42.)

(2) B&B Foreman J. O. Gutierrez, Carpenters T. H. Skaar and M. E. Dearing, Carpenter Helpers J. L. Arbuckle and T. F. Raczkowski each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man hours expended by outside forces in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimants hold seniority in their respective ranks within the Bridge and Building Sub-department.

The Carrier entered into a contract with an outside concern to perform all work involved in the construction of a new building at Tacoma, Washington. Such work is included within the scope of the Agreement and is reserved to the Carrier's Bridge and Building forces under the provisions of Rule 46 which, insofar as it is pertinent hereto, reads:

"(a) An employe who, in addition to his other duties, directs the work of men and reports to officials of the Railroad will be designated as a foreman.

* * * * *

(d) An employe assigned to constructing, repairing maintaining or dismantling bridges, building or other structures (except the work referred to in section (c) of this rule), or who is assigned to perform miscellaneous mechanic's work of this nature, will be designated as a bridge and building carpenter and/or mechanic.

* * * * *

It will be noted, however, that the claim before your Board in behalf of claimants Gutierrez, Skaar, Dearing, Arbuckle and Raczkowski is for payment of "equal proportionate share of the total number of man-hours expended by outside forces" rather than the actual time claimed by each of the individuals during the progression of the instant claim on the property.

In connection with the claim that is here before your Board for payment of "equal proportionate share of the total number of man-hours expended by outside forces" the claimants in the instant case, B&B carpenters and helpers, were not qualified to perform any of the work performed by the Contractor's Ironworkers nor were they qualified to operate the equipment utilized by Contractor's operator. Therefore, the total man-hours consumed by Contractor's Ironworkers (199½ hours) and the total man-hours consumed by Contractor's operator (4 hours) in the performance of the work here involved cannot properly be claimed by the claimants in the instant case. In other words, of the total man-hours consumed by Contractor's forces (356½ hours) 203½ of those man-hours constitutes work that the claimants were not qualified to perform thus they cannot properly claim "equal proportionate share" of the 203½ hours here involved.

The work with which we are here concerned is not within the scope and application of the Maintenance of Way Agreement either by schedule rules or past practice nor is it work that can be claimed under other agreements i.e., the May 17, 1968, Agreement, therefore, there occurred no violation of the Maintenance of Way Agreement or any other agreements when the work here involved was contracted.

All of the claimants were fully employed and under pay beginning June 23, 1969, therefore, there was no lost earnings on their part.

Attached hereto as Carrier's Exhibits are copies of the following:

Letter written by Mr. L. W. Harrington, Vice President-Labor Relations, to Mr. Max R. Martin, General Chairman, under date of November 26, 1969Carrier's Exhibit "B"

Letter written by Mr. L. W. Harrington to Mr. Max R. Martin under date of January 8, 1970Carrier's Exhibit "C"

(Exhibits not reproduced.)

OPINION OF BOARD: The Petitioner contends that the Carrier violated Article IV of the May 17, 1968, National Agreement when it failed to notify the General Chairman of its plans to contract out certain work.

The Carrier contends that the work involved is not exclusively reserved to employees covered by the Maintenance of Way Agreement that it has been the practice through the years to contract such work; and that the claimants were fully employed and there was no lost earnings on their part.

We adhere to the holdings in Awards 18305 and 18306 involving the same parties and similar contentions, and for the limited purposes of Article IV of the May 17, 1968, find that the Carrier violated that Agreement by failure to give advance notice to the General Chairman of its plans to contract out the work involved. We will also adhere to those awards in holding that since claimants suffered no pecuniary loss we will deny Part 2 of the claim. See

also Award 18687. We do not find the reasoning of Award 18792 so far as the assessment of damages is concerned persuasive.

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 Employees involved in this dispute are respectively Carrier and Employees 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 to the extent shown in Opinion.

AWARD

Part (1) of claim sustained; Part (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen

Dated at Chicago, Illinois this 10th day of December 1971.