



Award No. 19153
Docket No. MW-19167

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

THE TEXAS AND PACIFIC RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when, without prior notice to eGneral Chairman M A. Christie as reuired by Article IV of the May 17, 1968 National Agreement, is assigned the work of spraying roofing compound on the Car Shop roof at Marshall, Texas to outside forces (System File K 310-62).

(2) B&B employes R. L. Robertson, G. B. Wilkerson, J. A. Brown, E. E. Taylor, R. J. St. Romain and L. J. Graves each be allowed pay at thei rrespetective straight time rates for an equgal 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 classes within the Bridge and Building Subdepartment.

The factual situation here involved is partially described in a letter of appeal reading:

LETTER "A"

"September 8, 1969

Mr. J. C. Love
General Manager
The Texas & Pacific Railway Co.
311 T&P Building
Fort Worth Texas

Dear Sir:

I am appealing to you from Supt. Conway's decision in his letters of June 16, 1969 and September 5, 1969, File: TC-18978, declining claims B&B employes R. L. Robertson, G. B. Wilkerson, J. A. Brown, E. E. Taylor, R. J. St. Romain and L. J. Graves for an equal proportionate share of the man hours consumed by the contractor beginning May 5, 1969, and continuing so long as contractor, Martin Roofing and Coating Company, sprayed roofing compound on the Car Shop roof at Marshall, Texas.

Martin on June 6, 1969 for the north half. and the roofing project was completed on June 30, 1969.

6. The First Vice General Chairman initiated claim on June 12, 1969, alleging the Carrier had violated the Scope and Rules 1 and 2, as well as the provisions of Article IV of the May 17, 1968 Agreement in contracting the roof repair at Marshall, Texas to an outside contractor. In handling the dispute on the property, the Employees took the position that the work was within the Scope of the MofW Agreement and that the members of B&B Gang #302 were available to perform the work; however, in the General Chairman's letter to the General Manager the distribution of work as set out by the General Chairman proves that the gang was, in fact, engaged in bridge repair work in and around Shreveport, Louisiana.

7. In declining the claim at the various levels on the property, the Carrier pointed out that:

1. The Scope is a general rule that does not identify work covered therein.

2. There has been a long established practice to contract both construction and repair projects on this property particularly the the car shop at Marshall.

3. The claimants were engaged in scheduled bridge repair work at another location and suffered no loss of earnings during the claim period.

4. The rules of the basic agreement cited by the Employees were not violated, and Article IV of the May 17, 1968 Agreement was not applicable even though the Carrier did discuss the proposal with the General Chairman in conference on April 3, 1969, which is twenty days prior to the making of the contract with Edward F. Martin.

OPINION OF BOARD: The Organization contends that Carrier violated Article IV of the May 17, 1968 National Agreement when it failed to give notice to the Organization before contracting out the work of making roof repairs on the car shop roof at Marshall, Texas to an outside contractor.

It is undisputed that Carrier failed to give written notice to the Organization, as required by said Article IV of the May 17, 1968 National Agreement 15 days prior to contracting out the work in dispute.

This Board, in Award No. 18305, with the present referee sitting, refused to follow Carriers contention that the Organization must first prove that the work in dispute belonged "exclusively" to Claimants by tradition, practice and custom before Carrier is required to give the notice referred to in said Article IV. This conclusion was affirmed by this Board in later Award Nos. 18687, 18773, 18792, 18860, 18967, 18968, 18714 and 18716.

Therefore, we find that Carrier by failing to give notice to the Organization before contracting out the work in question violated the specific requirements of Article IV of the May 17, 1968 National Agreement.

In view of the facts that Claimants were working on the date in question and suffered no pecuniary loss we will deny their claim for damages.

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 Employee involved in this dispute are respectively Carrier and Employee 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 in accordance with the Opinion.

AWARD

Part (1) of the Statement of Claim is sustained.

Part (2) of the Statement of Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April 1972.