

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19399
Docket Number MW-19473

Robert M. O'Brien, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
 { Chicago and North Western Railway Company

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

(1) The Carrier violated the Agreement and Article IV of the National Agreement of May 17, 1968 when, without prior notice to the General Chairman, it assigned track maintenance work at and/or in the vicinity of Marshalltown, Ames, Boone and Lisbon, Iowa to outside forces beginning on October 6, 1969 (System File 81-3-169).

(2) The track foremen, assistant track foremen and laborers on the Iowa Division who were assigned to Maintenance Gangs 923, 929 and 930 and to Section Gangs 222 and 233 each be allowed pay* at his respective rate of pay for an equal proportionate share of the total number of man hours consumed by outside forces in performing the work referred to in Part (1) hereof.

*(The claim contemplates that all service performed by said outside forces during the claimants' straight-time hours will be allocated to the claimants on the basis of the claimants' straight-time rates and that all service performed by said outside forces during the claimants' overtime hours will be allocated to the claimants on the basis of the claimants' overtime rates.)

(3) The Carrier shall also pay the claimants six percent (6%) interest per annum on the monetary allowances accruing from the initial claim date until paid.

OPINION OF BOARD: The Organization contends that Carrier used manpower furnished by Manpower, Inc., an outside concern, to perform routine track maintenance work, which work, it states, belongs to Track Sub-department forces, and failed to notify the General Chairman in writing of its plans to contract out the work as required by Article IV of the May 17, 1968 National Agreement.

It is undisputed that Manpower, Inc. recruited, selected and hired the men. They were paid by Manpower while they worked with regular track forces under the supervision of the track foreman.

Carrier defends on the theory that it did not contract out the work in question and, in any event, since claimants did not sustain any pecuniary loss damages should not be allowed.

This Board adopts the reasoning in Award 19305 and we hold that by hiring Manpower, Inc. to perform the work herein, Carrier did contract out work so as to come within the provisions of the May 17, 1968 National Agreement. And it makes no difference that the track maintenance work was usually performed by extra gang laborers. The work is work embraced within the scope of Petitioner's applicable Agreement even though extra gang laborers were used to perform it in the past. Therefore, it was incumbent on Carrier to comply with the provisions of Article IV before contracting out the scope covered work to outside forces. It is uncontroverted that Carrier did not notify the General Chairman of its plans to contract out. And having failed to do so Carrier violated Article IV of the May 17, 1968 National Agreement.

We do not find that Carrier waived the defense of full employment and thus no pecuniary loss and we will adhere to those awards holding that since Claimants suffered no pecuniary loss we will deny Part 2 of the claim. See Awards 18305, 18306, 18687, 19305 and others.

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 in accordance with the Opinion.

A W A R D

Part (1) of the claim sustained;

Part (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Kellen
Executive Secretary

Dated at Chicago, Illinois, this 15th day of September 1972.

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OPINION OF CARRIER MEMBERS -- AWARD 19399, DOCKET MW-19473

(Referee O'Brien)

We concur in the portion of the award which denies part 2 of the claim, but dissent to the portion which sustains part 1. See Opinion of Carrier Members, Award 19305.

G. L. Naylor

H. M. Brainerd

W. B. Jones

P. C. Carter