

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19426
Docket Number MW-19410

Thomas L. Hayes, 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 when, without prior notice to General Chairman P. J. McAndrews as required by Article IV of the May 17, 1968 National Agreement, it assigned the work of installing track ties between Maple Park and Dixon, Illinois on Sub-division No. 2 of the Galena Division to outside forces (System File 81-1-192).

(2) The claimants* each be allowed pay** at their respective rates 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 claimants are:

Foremen

P. D. Timmons
I. Gilkison
R. Spicer
W. Milburn
F. J. Garcia
H. C. Gall
F. Matera
A. T. Apponi
D. Concotelle

Assistant Foremen

C. Dewey

Machine Operators

D. E. Harriss
L. Oladie
H. F. Roush
V. Veliz
D. Contreras
E. J. McAndrews

Assistant Foremen - Truck Driver

H. P. Fifield
G. E. Rombough

Laborers

I. Marchetti
H. McAndrews
A. Martinez
J. L. Spicer
R. E. Eaglin
C. A. Giese
F. Whitehouse
F. Thompson

Laborers

F. Baltierrez
R. J. Cisketti
H. Torres
R. Timmons
F. Luna
M. Galletti
A. O. Najera
H. Granados

Laborers

D. Meyer
D. Reiley
F. Gomez
R. C. Mejia
F. Jordon

Laborers

S. Rocha
F. Fraga
P. M. Fraga
S. Gamina
S. R. Garcia

** (The claim contemplates that all service performed by said outside forces during 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 alleges that Carrier violated Article IV of the May 17, 1968 National Agreement when it contracted with an outside concern to install track ties between Maple Park and Dixon, Illinois without first giving the General Chairman notice of its plans to contract out the tie work.

Carrier asserts that this is a continuation of the claim in Docket No. MW-19323 (which became Award 19254) and in Award 19254 the Board stated in part as follows:

"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 the aforementioned tie renewal work.

"We are of the opinion that tie renewal work is work embraced within the scope of Petitioner's applicable Agreement. Therefore, it was incumbent on Carrier to comply with the provisions of Article IV before contracting out the scope covered work to outside forces. When Carrier failed to give advance notice to the General Chairman of its plans to contract out the work involved, it violated the clear and unambiguous provisions of Article IV of the May 17, 1968 National Agreement."

We feel that on the question of whether there has been a violation of contract in the instant dispute Award 19254 provides a useful precedent which should be followed.

In the case now before the Board, the General Chairman was not notified of Carrier's plan to contract out work. Moreover, in the record there is an admission by Carrier that outside contractors were used in certain cases in dispute including this one.

Thus, we hold that there has been a violation of the applicable agreement.

Because Carrier never raised the monetary damage issue on the property, we do not need to reach the question of whether damages would have been allowable if such issue had been joined.

In view of the foregoing, Parts 1 and 2 of the Claim are sustained in behalf of all Claimants, except F. Luna and S. Rocha who resigned prior to the start of the renewal program, but Part 3 of the Claim is disallowed.

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.

A W A R D

Claim sustained to the extent and in the manner set forth in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: EA Killen

Dated at Chicago, Illinois, this 29th day of September 1972.