

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19574
Docket Number MW-19571

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Norfolk and Western Railway Company (A&P Regions)

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

(1) The Carrier violated the Agreement when, without prior notification to or discussion and agreement with General Chairman J. H. Bowen, it used outside forces to perform work on Pier 6 on June 29 and 30, July 1, 3, 4 and 5, 1970 (System File MW-LP-70-2).

(2) B&E employes W. S. Williamson, L. L. Simmerman, A. D. Gilbert, R. E. Lee, W. Lee, T. E. Pritchard and T. R. Southworth 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 mentioned in Part (1).

OPINION OF BOARD: The Organization contends that the Carrier violated Article IV of the May 17, 1958 National Agreement when it failed to give notice to the Organization before contracting out the work of repairing the No. 1 Loader at Pier 6 from June 29 through July 5, 1970. The work involved the replacement of a sprocket gear and work incidental to that effort. It is undisputed that Carrier failed to give the notice required by Article IV referred to above.

In its defense, the Carrier asserts that Claimants had neither the skills nor the equipment required to perform the work in question; however, Carrier presented no evidence in support of its assertion. Carrier also contends that the Claimants were fully employed during the period in question and lost no earnings.

This Board, in Award No. 13305 (followed by a long line of concurring decisions) refused to accept the argument that the Organization must prove "exclusivity" prior to Carrier being required to give notice under Article IV. We reaffirm that reasoning and therefore sustain Part 1 of the Claim.

We are reluctant to treat blatant violations of contractual rights by simple reprimand. Obviously, calculated violation of the contract, such as in this case, cannot lead to a constructive relationship between the parties, as contemplated by the Act. However, since Claimants suffered no monetary loss, we shall follow Awards 18305, 13687, 19153 and many others, in denying Part 2 of the Claim.

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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

Part (1) of the Claim is sustained.

Part (2) of the Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1973.