H. Q. Harper

NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19624
THIRD DIVISION Docket Number MW-19514

Alfred H. Brent, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Burlington Northern Inc.

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

(1) The Carrier violated the Agreement when, without benefit of notice to or consultation and agreement with General Chairman Funk, it contracted to Gay Margado Chevrolet Inc. the work of repairing Truck #135 (System File 314-F/MW-84-Contracting out - 9-22-70).

(2) Mechanics C. Anderson, H. Fisher, C. Hagey, I. Larsen, J. Wienecke, S. Shanko, R. Robertson, C. Lassiter, G. Godvig and C. Dykman 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.

OPINION OF BOARD: This claim is based on the Organizations contention that the body work necessary to repair a Chevrolet truck, sub-contracted by the Carrier, is of the type and character reserved to Roadway Equipment and Automotive Repair Department employes under the Parties' Agreement. When the Carrier made no effort to obtain the approval of the General Chairman prior to sub-contracting, the Agreement was violated.

The Parties have agreed in Rule 40, Article X, that "all work on the operating property, as classified in this Agreement, shall be performed by employees covered by this Agreement, unless by mutual agreement between the General Chairman and designated Representative of Management, it is agreed that certain jobs may be contracted to outside parties account inability of the railroad due to lack of equipment, qualified forces or other reasons to perform such work with its own forces....".

This contracting rule has been before this Board numerous times under various factual circumstances. In each case this Board has upheld the Organization when the Carrier failed to obtain the required approval to remove work from the confines of this Agreement. The Carrier asserts that Mechanics in its repair shop are not skilled in the body repair work and therefore it was not necessary to secure the prior approval of the Organization to have this work performed outside. The claimants are mechanics who perform all required work under Rule 41 of the Agreement. While the Carrier has had similar repair work performed by outside contractors in the past, it was done only after discussion with the Organization.

This Board has held in Award 7060 (Carter), that both Parties had an important obligation to each other.

> "..It contends that special skills and equipment were required and for this reason Carrier could properly contract the work. We point out, however, that under the controlling rule in the present Agreement, Carrier was required to give the work to its employes unless an agreement with the General Chairman is obtained permitting the contracting of the work 'due to lack of equipment, qualified forces or other reasons.' No attempt was made to secure such an agreement and the controlling rule was therefore violated. Awards 3215, 6199. We do not intend to imply that the General Chairman could arbitrarily refuse to permit the contracting of work in a proper case. We do state that the failure to negotiate with the General Chairman precludes any contention under the rule before us that the carrier could properly proceed to farm out the work. The rule provision is clear and unambiguous. The Carrier cannot be excused from complying with its plain provisions."

Award 14960 (Referee Lynch) between these same parties, involved Rule 41 as embracing work within the contracting paragraph of Rule 40. This Board has consistently held that for the Carrier to coma within an exception to the rule it must fulfill its obligation to obtain the prior agreement or consent of the Organization by notifying and discussing the matter with the Organization.

The Board held in Award 13845:

> "While Petitioner challenges the contention that a licensed plumber was needed on the job, it maintains that whether or not this was so, the consent of its General Chairman as a condition precedent to such an outside contract was no less required by Rule 40 of the Agreement. In light of prior decisions by this Division concerning the selfsame Agreement on this property and also involving a measure of plumbing work, as well as the repeated instances in the past where this Carrier wought the antecedent consent of Petitioner before retaining independent contractors on jobs which, at least in part, required licensed plumbers, it would seem that Petitioner's position on this aspect of its claim is well taken. See Awards 4920, 4921 (Boyd), 7060 (Carter). Moreover, in view of the apposite work history on this property it may be expected that if the Carrier had taken up the nature of the subject job with Petitioner before it engaged the services of an outside contractor, the issue as to whether or not a licensed plumber was required by Local Law could have been quickly resolved by communication with the city authorities, if necessary. We hold that, in all the circumstances, the omission of the Carrier to obtain the agreement or consent of the General Chairman of Petitioner to the outside contract in issue was a violation of Rule 40 of the Agreement."

Carrier presented issues in its submission which were not handled on the property and we cannot consider them since this Board has consistently held that new issues not raised on the property but raised for the first time in the submission are inadmissible and not to be given consideration. (See 11939, 11987, 12388, 13957, 16423, 16061)

Based on the many precedents, this Board concludes that the Agreement was violated.

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 Employes involved in this dispute are respectively Carrier and Employes 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

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 27, 1973.