

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19626  
Docket Number MU-19526

Alfred H. Brent, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**  
(The Illinois Central Railroad 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 notification to the General Chairman, it assigned weed spraying work on the Louisiana Division to outside forces (System File **LA-97-M-70/Case 728 MofW**).

(2) Mr. Lane **Hughey** be allowed pay at the head operator's rate\* and Messrs. E. **J. Kling** and P. L. Ballard be allowed pay at the wing operator's rate\* for **a** number of hours equal to the number of the number of hours that the contractor's weed spray equipment was used, on the Louisiana Division.

"Straight time rates will be allowed for the time the contractor's equipment was used during the claimants' regularly assigned hours and time and one-half rates will be allowed for the time the contractor's equipment was used outside of the claimants' regularly assigned hours.

OPINION OF BOARD: The Organization contends that the Carrier violated the terms of the Agreement when it contracted out weed spraying work without prior notice to **the** General Chairman. There is no dispute that the **Scope** Rule covers **this** category of work. The Carrier concedes that it has equipment which is capable of performing the work in question, but contends that it does not perform as well as the equipment utilized by the contractor.

This Board has held that the exclusivity doctrine is of no effect in deciding disputes involving Article IV of the May 17, **1968** Agreement, but has also denied monetary payments where no loss was shown. See Awards 18305 Dugan, 18306 Dugan, 18860 Devine, 18687 **Rimer**, 18773 Edgett, **18714 Devine, 18716 Devine** (involving the same parties), 18967 Cull, 18968 Cull, 19056 **Franden**, 19153 Dugan, 19154 Dugan, **19191** O'Brien, 19399 O'Brien.

This **Board** finds that nothing in Article IV changes the rights of the parties to sub-contract out. The Carrier should have given the General Chairman prior notice of its intention. Based on the precedents cited above, this Board concludes that the Agreement **was** violated, but there **were** no monetary 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 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

The Agreement was violated.

A W A R D

Claim 1 is sustained.

Claim 2 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: E. A. Killian  
Executive Secretary

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