

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19631
Docket Number Ear-19598

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 Agreement was violated when, without prior notice to General Chairman Hull, outside forces were used to perform grading and drainage work **at** Johnston Yards, Memphis, Tennessee beginning on or about July 20, 1970 (System File **T-69-T-70/Case** 748.

(2) Machine Operators H. J. Smith, H. M. **Verble**, A. L. **Holt**, R. E. Wiley, Jr., M. **J.** Binkley, J. E. Barker, E. R. Adkins, T. L. Robinson, F. L. **Sandling**, and D. L. Martin 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)** of this claim.

OPINION OF BOARD: The Organization contends that the Carrier violated the Agreement between the parties when it sub-contracted out certain grading and drainage work **at** Johnston Yards, **Memphis**, without giving the General Chairman prior notice of its intention to do so. The Carrier contends that this project required large earth moving machines which were not available on **the** property, that it required the purchase and transportation of more than 45,000 cubic yards of fill, that the Carrier does not possess the necessary dump trucks, and that this project was beyond the capabilities of its work force.

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 Edgott, 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. **The** record **indicates** that **atleast**

four machine operator positions were abolished on August 31, 1970. If the claimants actually suffered a monetary loss while the contractor was working on the property, their claim for pay at their respective straight time rates for an equal proportionate share of the total man hours they lost as a result of the contractor's work should be allowed.

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 sustained to the extent indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. G. Killen
Executive Secretary

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