

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19860  
Docket Number MU-19849

Frederick R. Blackwell, Referee

(Brotherhood of Maintenance of Way Employee

PARTIES TO DISPUTE: (

(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 it assigned or otherwise permitted outside forces to erect a steel tank at **Williamson**, West Virginia (System File MW-WI-71-4).

(2) The Carrier also violated Article IV of the National Agreement of May 17, 1968 when it did not give the General Chairman advance written notice of its intention to contract said work,

(3) Each claimant (listed below) be allowed pay at his respective straight time rate for an equal proportionate share of the total number of man hours expended by outside forces in performing the work described in Part (1) above.

Carpenter - 1st Rate

J. E. Horton

Carpenter - Helpers

R. D. Cochran  
M. H. Dye  
J. W. McFarland

Electric Welders

J. C. Gibson  
J. M. Grace  
Marshall Hopson, Jr.  
H. V. Mullins

Carpenters - 2nd Rate

G. L. Puckett  
J. H. Fuller  
C. C. Cumby  
W. W. Watkins

Machine Operator

E. J. Thompson

Electric Welder Helpers

C. W. Whited  
J. R. Ogles  
H. H. Pruett  
O. U. Bell

OPINION OF BOARD: This dispute involves **Article** IV of the May 17, 1968 National Agreement which, in pertinent part, reads **as** follows:

"In the event a carrier **plans** to **contract out** work within the scope of the applicable schedule agreement, the carrier shall notify the General Chairman of the organization involved in

"writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than 15 days prior thereto.

If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the carrier shall promptly meet with him for that purpose. Said carrier and organization representatives shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached the carrier may nevertheless proceed with said contracting, and the organization may file and progress claims in connection therewith."

Without giving the written notice prescribed by the first paragraph set out above, the Carrier contracted with an outside concern for the erection of a storage tank for diesel oil at Williamson, West Virginia. In the past similar tanks have been erected by Maintenance of Way forces and also by outside concerns. The record shows that some of the herein claimants were fully employed and some were furloughed during the claim period.

The involved Scope Rule is a general one and, on the record here, there is no scope violation; the employees cannot, in the obtaining facts, meet the exclusivity criteria associated with such a rule. However, the exclusivity doctrine is of no effect in deciding disputes involving Article IV of the May 17, 1968 Agreement, Award 15305 (Dugan) among others, and we therefore find that Carrier's action did violate the requirements of that Article. A series of Awards have held that full employment does bar a compensatory award in connection with an Article IV violation. However, the rule that full employment bars compensation necessarily implies that non-full-employment affords a basis for compensation. Thus, in Award 19631 (Brent) this Board awarded compensation for claimants who appeared not to have been fully employed during the claim period. In that Award we stated that:

".... The record indicates that at least 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."

We believe the rationale of the Award 19631 applies to the furloughed employees in this dispute. (Claimants J. E. Horton, G. L. Fuckett, J. H. Fuller, C. C. Cumby, W. W. Watkins, R. O. Cochran, M. H. Dye, and J. W. McFarland.) If the furloughed claimants actually suffered a monetary loss while the outside concern was working on the property, their claim as described in paragraph 3 Of the claim 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 valued 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 indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulson  
Executive Secretary

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