

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20158
Docket Number MW-20116

Irwin M. Lieberman, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(St. Louis-San Francisco Railway Company

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

(1) The Carrier violated the Agreement when it assigned ditching work in the vicinity of Tindle Mills to outside **forces -** said **work** performed on August 19, 20 and 23, 1971 (System File A-8322 J. D. Williams/D-6664).

(2) The Carrier also violated Article IV of the May 17, 1968 Agreement **when** the above-mentioned work was assigned to outside forces without prior notice to or consultation and agreement with the General Chairman.

(3) As a consequence of each of the aforesaid violations, Special Equipment Operator J. D. Williams be allowed 18.5 hours of pay at the straight time rate of his **assignment.**

OPINION OF BOARD: During August 1971, the Carrier contracted **with** an outside company to perform ditching work in the vicinity of Springfield, Missouri. The work took **18½** hours. **Prior** to the outside contracting, no notice of Carrier's intention to contract the work was **given** to the Organization. The Claimant holds seniority as a Group B Special Machine Engineer and Operator and was fully qualified to perform the work involved herein.

From our review of the record of the dispute as handled on the property, we are convinced that the work performed by the outside contractor was work coming within the scope of the Agreement. **The** Carrier has not shown an emergency **or** other justifiable reason for contracting. The contention of the Carrier concerning lack of equipment to perform ditching work is not persuasive and there is no showing that the work could not have been scheduled at a time **when** it could have been performed by Claimant or other Agreement covered personnel.

The Carrier violated the Scope of the Agreement as well as the notice provisions of Article IV of the May 17, 1968 Agreement which resulted in a loss of work opportunity for Claimant.

The Claim will be sustained.

Award Number 20158
Docket Number MW-20116

Page 2

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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1974.