

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20945
Docket Number MW-20941

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Chicago and North Western Transportation Company

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 force6 to perform construction and repair work on the elevator track at Ashton, Iowa (System File 81-w-82).

(2) The Carrier violated the Agreement when it assigned or otherwise permitted outside force6 to repair the "Old Elevator hack" and the "Manning Track" at St. James, Minnesota (System File 81-19-83).

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

(4) Section Foreman W. E. Olson, Laborer R. T. Schwebach, A. D. Chronister and Machine Operator C. Grimmus each be allowed pay at their respective rate6 for an equal proportionate share of the total number of man-hours expended by outside force6 in performing the work described in Part (1).^u

(5) Section Foreman L. Tetzloff, Laborer E. Frese, D. Anderson and R. Fowler each be allowed pay at their respective rates for an equal proportionate share of total number of man-hours expended by outside force6 in performing the work described in Part (2).

OPINION OF BOARD: The disputes herein are identical in all important aspects with those considered recently by this Board, involving the same parties, in Award -20895. In this dispute again the Organization presented a *prima facie* case in support of its Claims; the Carrier's defense was predicated on the allegation that the property on which the work had been performed was leased to certain industries. Petitioner, in letters dated November 27, 1973 stated, *inter alia*: "However, Mr. Hellem has not submitted a copy of the alleged lease arrangement in support of his contentions." With its rebuttal statement to this Board on April 7, 1975 the Carrier for the first time supplied copies of the leases it referred to in the handling of the property. Obviously, such material cannot be considered (see Awards 19724 and 20588 among others). Since the burden of proof to support an affirmative defense

rested with Carrier and Carrier was obviously asked to furnish copies of the leases, Carrier has failed to perfect its defense just as it did in the previous dispute alluded to above. Since there appears to be a bona fide lease arrangement, we are at a loss to understand Carrier's failure to present the required documents; however, under the circumstances, we have no choice but to affirm the Organization's position, as we did in Award 20895.

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: G. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1976.