

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22783
Docket Number MW-22429

James F. Scearce, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Southern Pacific Transportation Company
(Pacific Lines)

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

(1) The Carrier -violated the Agreement when it assigned track
work in connection with a grade separation project to outside forces
(Carrier's Files MofW 152-815 and MofW 152-816).

(2) 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 said work,

(3) As a consequence of the aforesaid violation, furloughed
Laborers S. Ponce, R. Zaragoza, L. G. Rodriguez, M. C. Castaneda,
J. B. Magana, R. G. Montalvo, C. V. Garcia, M. G. Fernandez, J. C. Villaruel,
I. Majarro, S. Canchola, S. Partida, R. N. Macias, H. H. Cabada, M. C. Franco,
R. F. Romo, L. M. Rios, A. A. Veliz, M. B. Enriquez, J. Gaona and
C. V. Parada each be allowed pay at their respective rates for an equal
proportionate share of the total number of hours expended by outside forces,"

OPINION OF BOARD: The essence of the extensive case and arguments
presented by the parties goes to the question of what,
if any, responsibility issues to the Carrier to notify the Organization in
advance of work performed in connection with a grade separation project
and whether or not members of the Carrier's furloughed work force, repre-
sented by the Organization, were entitled to perform such work.

Article IV of the applicable Agreement deals with "Contracting Out"
and requires that, inter alia:

"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."

According to the Carrier, no obligation exists here because the work involved was both for the benefit of the City of Los Angeles (the construction of an underpass) and paid for by the City. Thus, the Carrier asserts, it could not contract out that over which it did not have control.

We find the Carrier's defense to this claim fails on a very important -- and decisive -- point: while it may well be that the end result of this project was the underpass, for which the City assumed all costs involved, the construction of the trackage in question was strictly and singularly for use of the Carrier. Moreover, the right-of-way was the property of the Carrier; it seems apparent that the Carrier had to agree to the grade separation as well as the method by which such work, including the shoofly and that the subsequent permanent track -- to be performed by others -- would be accomplished on its property. Consequently, we conclude that such decision was within the authority of the Carrier, as evidenced by the contracts between Carrier and the municipality in the record. We also conclude that, based on the foregoing, the work as set out in the claim was work normally and typically performed by the track forces and that prior notice should have been given under Article IV.

We shall order that the parties review such work within 90 days from the date of this Award and in such time frame shall agree upon compensation for the Claimants as specified in this Claim. Any such compensation may be offset by wages received by the Claimants during the period involved. Should the parties be unable to resolve such matters, it shall be returned to this Board for final settlement.

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.

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Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1980.
