

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23093
Docket Number CL22657

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
(The Detroit and Toledo Shore Line Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-8676)
that:

1. The Carrier violated the effective Clerks' Agreement when, **commencing** on October 1, 1977, it contracted with Mr. **Gene** A. Cook, and/or Cook's **Cleaning** Service, to perform janitorial work at the Carrier's Trenton, Michigan station, in a **manner** meant to evade the application of the Agreement.

2. The Carrier shall now compensate Mr. Cook for the difference between eight (8) hours' pay per **week** at the **time** and one-half rate of his **assignment** and \$130.00 per month, which is the amount paid him by the Carrier, **commencing** on October 1, 1977, and continuing until March **12**, 1978; the date the contract was cancelled.

OPINION OF BOARD: A threshold question is presented on this record as to whether requisite on-property conferences were held prior to the appeal of the claim to arbitration. The same issue concerning the **same** parties was presented and resolved in our recent Award 22537. We **find no** reason to **deviate from the findings** in that Award which we reiterate as follows:

"Before this Board can deal with the merits of the dispute, we **must** dispose of the arguments and **counter-arguments** dealing with the type of conference **that** occurred between the parties prior to submission of this dispute off the property. **From** review of the record there is no question that a conference was held. Also, there is no question that the conference was brief and perfunctory. One may ask, does a brief **and** perfunctory conference meet the **jurisdictional requirements** of the Act? In this particular case we are of the opinion that the parties' conferences complied with the letter of the law. However, we feel that it was not within its spirit."

'We will, accordingly, **consider** the claim on its merits, but we would admonish the parties to participate in meaningful negotiations and attempt to adjust **grievances** in conference as contemplated by **the** Act prior to submission to our Board. Perhaps it would be well for the parties to review Third **Division** Award 11434 (Rose) and the Supreme Court Opinion in Brotherhood of Locomotive Engineers. et al., v. Louisville and Nashville (373 U.S. 33) (1963), as quoted therein."

Turning to the merits of the present claim, it **is** apparent from the record that the complained-of **service** is within **the** scope of the Agreement. **However**, the subcontracting was open **and** notorious, yet not complained of for at least five (5) years. **In** the circumstances we find Award 3-17590 controlling in this case and follow its teaching in sustaining the allegation of violation while denying damages on the basis of estoppel.

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 Part 1 is sustained. Claim Part 2 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: _____

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1980.