NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24399

THIRD DIVISION Docket Number MW-24303

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(The Chesapeake and Ohio Railway Company
((Southern Region)

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

(1) The Carrier violated the Agreement when, without a conference having been held as required by the October 24, 1957 Letter of Agreement, it assigned outside forces to clean yard tracks on the Richmond Division beginning March 10, 1980 (System File C-TC-923/MG-2805).

(2) Because of the aforesaid violation, Machine Operator George 0. Thompson be allowed eight (8) hours of pay per day for March 10 and 11, 1980; ten (10) hours of pay per day for March 17, 18, 19, 20 and 21, 1980 and ten (10) hours of pay for each day thereafter on which the work referred to in Part (1) hereof is performed by outside forces."

OPINION OF BOARD: The pertinent Agreement reserves certain work to the Employes and the October 24, 1957 Letter or Agreement between the parties specifies that the Carrier will perform all maintenance or work with classified employes except where special equipment is needed. But it was agreed that the Carrier would discuss any asserted necessity to deviate from that practice prior to contracting work out.

The Employes assert that no such conference was held even though work which could have been performed by the Employes was contracted to another firm.

We have reviewed at length the Carrier's contention that a different case has been submitted to this Board than the one which was handled on the property, however we are unable to agree with that contention. We feel that the Employes set forth a basic claim and followed it consistently through the procedures. We find that no conference was held and that there was a violation of the Carrier's obligation and accordingly we will sustain the claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day or May 1983.

RECEIVED
JUL 27 1983
Chicago Office - BMWE

Serial No. 327

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. I TO AWARD NO. 24399

DOCKET NO. MW-24303

NAME OF ORGANIZATION: Brotherhood of Maintenance of Way Employes

NAME OF CARRIER: Chesapeake and Ohio Railway Company (Southern Region)

Award 24399 considered a claim for eight (8) hours of pay for certain specified days; ten (10) hours per day for the specified days and ten (10) hours of pay for "... each day thereafter on which the work referred to ... is performed by outside forces."

The Division found that "... no conference was held and that there was a violation of the Carrier's obligation and accordingly we will sustain the claim."

Despite that finding and despite the fact that outside forces were on the property until July 23, 1980, Carrier paid Claimant only $433.00 which represented "... any time he lost as a result of the Carrier contracting for the Yard Cleaner."

The Organization has sought an Interpretation as follows:

> "Does the language 'we will sustain the claim' in Award 24399 contemplate that the claimant shall be allowed eight (8) hours of pay per day for March 10 and 11, 1980; ten (10) hours of pay per day for March 17, 18, 19, 20 and 21, 1980 and ten (10) hours of pay for each day thereafter on which the work in question was performed even though the claimant might have performed compensable service for the Carrier during part of the claim period?"

We do not speculate upon our ruling had the above issue been presented to us when we initially heard the case. It was not, and it is not appropriate to attack the form of the claim after the claim has been sustained. Since it is now coo late for Carrier to attack the claim we will answer the issue in the affirmative.

Referee Joseph A. Sickles who sat with the Board when the Award was adopted, also participated with the Division in making this Interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of November 1985.