

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award. Number **24484**
Docket Number **MW-24016**

Josef P. **Sirefman**, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way **Employees**
{ The Atchison, Topeka and Santa Fe Railway Company

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

(1) The Carrier violated Article IV of the May 17, 1968 National Agreement when, without prior notification to the General **Chairman**, it assigned work of the **Maintenance of Way and Structures** Department at Topeka and Lawrence, Kansas to outside forces beginning July **13**, 1979 (System File **4-P-360-4/11-1940-20-121**).

(2) Because of the aforesaid violation, Mr. R. **Gasper** be allowed eight (8) hours of pay for each day outside forces were used to perform the work referred to in Part (1) hereof."

OPINION OF BOARD: A review of the record by this Board establishes that Carrier did not give notice to the organization of "plans to contract out **work** within the applicable schedule agreement", as required by Article IV of the May 17, **1968** National **Agreement**, when it contracted out certain work in July 1979. Although the Carrier offers a variety of reasons for not giving notice, including worsening weather **conditions** which required a rapid response to keep the road in repair, the Article requires that **some** notice be furnished to the organization. See Third Division Award No. **23578**.

In that Award Referee J. B. **LaRocco** also held that:

"A long line of Third Division Awards precludes us **from** providing the claimants with pecuniary relief where they have not proved loss of work opportunity or loss of earnings due to the Carrier's failure to tender the required notice (unless the Carrier has **flagrantly** or repeatedly failed to **comply**) with (the applicable rule-ed.). See Third Division Awards No. **23354** (Dennis); No. **21646** (Ables); No. **20275** (Eischen); No. **20671** (Eischen); No. **18305** (Dugan). In this case, we do not find any evidence of a malicious **motive** underlying the Carrier's failure to give the . . . notice."

Thus, this Board reiterates that Carrier had an **obligation** to furnish the mandated notice, but the claim for monetary relief is denied.

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 in accordance with the Opinion.

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 **14th** day of July **1983**.

