

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25002
Docket Number MW-25030

Thomas F. Carey, Referee

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

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

(1) The Carrier violated the Agreement when it assigned the work of repairing the roof of the depot at San Antonio, Texas from August 3, 1981 through November 18, 1981 to outside forces (System File MW-81-170/327-18-A).

(2) The Carrier also violated Article 36 when it did not give the General Chairman advance written notice of its intention to contract said work.

(3) B&B Foreman H. L. Kenne, Asst. B&B Foreman L. N. Ward, Carpenters R. R. Colmenero, J. D. Wickizer, M. M. Rodriguez, M. W. Woytasczyk, J. G. McGlothlin and Helpers J. D. Ebner and R. G. Crawford each be allowed two hundred eighty (280) hours of pay at their respective straight time rates and seventy-seven (77) hours of pay at their respective time and one-half rates because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: This dispute is the result of a claim by the BMWE that the Carrier violated the Agreement by not giving advance written notice of its intention to contract out work on the San Antonio, Texas depot. Carrier claims that a notice dated September 25, 1980, and which the BMWE objected to, should cover work subsequently done between August 3, 1981 and November 18, 1981. A close reading of the record indicates that the work outlined in the September 25, 1980 notice is significantly different than that which was done in the August-November time period in question. That letter only specified that the "work will consist of removing existing tile roof, repairing support structure and replacement of tile roof."

There appears to be no dispute that Beldon Roofing and Remodeling Company commenced the disputed work on August 3, 1981 and that this work was more extensive than the work specified in the September 25, 1980 letter. There is no indication of any subsequent notice in accordance with Article 36 of the Agreement. Nor, can the conferencing held on July 29, 1982 be construed as meeting the conference requirements of Article 36, since the disputed work was performed in 1981.

Examination of the record establishes that the Carrier violated Article 36 of the Agreement by not giving sufficient notice to contract out work since the Agreement clearly requires the Carrier to notify those involved of its intent to contract out work normally reserved to employees.

This Board, while finding that the Carrier did not furnish the mandated notice, does not find sufficient reason to award pecuniary relief. The Claimants have not proved loss of work or earnings. There is solid precedent (see Third Division Awards No. 18305 (Dugan), No. 23345 (Dennis), No. 20275 and 20671 (Eischen)) that to award a penalty, Claimants must show distinct damages.

This Board, then, finds that while the Carrier did not fulfill its obligation to provide the mandated notice, there was not a showing of sufficient evidence as to damage to provide monetary relief sought by the Claimants.

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:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.