

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25247
Docket Number MW-25241

Marty E. Zusman, Referee

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

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

(1) The **Ageement** was violated when outside forces were used to perform excavation work in connection with installing drainage pipe, water lines, air lines, and grade work for fueling station facilities at "**Kirby**" yard April 26, 1982 through May 28, 1982 (System File MW-82-134/352-89-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) As a **consequence** of the aforesaid violations, Roadway Machine Operators S. R. **Sampayo**, J. M. Rodriguez, J. F. **Juarez**, D. A. **Hershberger**, M. J. **Magirl**, N. T. Cook, T. R. Lester and M. A. Stolicki shall each be allowed two **hundered** sixteen (216) hours of pay at their respective straight time rates and one hundred twelve (112) hours of pay at their respective overtime rates.

OPINION OF BOARD: This is a dispute initiated by the Organization on behalf of eight Claimants, all of whom are Roadway Machine Operators. The Organization's claim is that the Carrier violated the Agreement in assignment of excavating work to outside forces when it did not give proper notification of its intent to contract out work as specified in Article 36 which reads in pertinent part:

"Article 36. Contracting Out

In the event this 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:

The instant dispute arose out of the actions of Carrier when it contracted work to an outside firm in the installation of pipes and lines for a fueling station. With respect to the case at bar the Board finds substantial evidence present to indicate Carrier violation of Article 36 in that no documentary evidence was ever produced on property that such notice of intent had been provided to the General Chairman. Such assertions as were provided, and denied by the Organization, **were** clearly not substantiated. That excavation work done by outside forces between April 26, 1982, and May 28, 1982, **was** within the Scope of the Agreement is apparent. The record before this Board is absent of any substantive evidence to substantiate Carrier claims in the instant case. Specifically, Carrier did violate Article 36 of the Agreement when it failed to provide written notice.

While the Board is aware of the emptiness of providing for no remedy or relief when sustaining an award, a special situation exists when the Carrier violates Article 36 and when all **employees** are fully employed and there is no demonstration of actual loss of earnings as in the case at bar. Under Article IV Interpretations, a ruling to award no compensation by this Board is consistent with a long list of past Awards of the National Railroad Adjustment Board (Third Division Awards 18305, 20275, 23203, 23354, 23560, 23578). Given these prior Awards, compensation to Claimants for Carrier violation of Article 36 may not be provided.

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

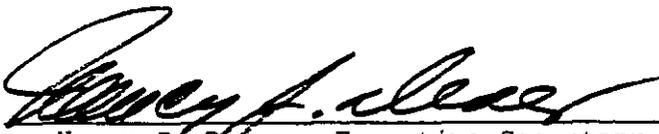
That the Agreement was violated.

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 31st day of January 1985.