

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 2556,
Docket Number MW-25506

Frances Penn, Referee

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE: {

{ 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 outside forces to perform hauling, filling and grading ~~work~~ at Kirby Yard, February 17 through June 15, 1983 (System File MW-83-36/384-70-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) Furloughed Machine Operators F. Fuentes, G. R. Gonzales and E. Hernandez shall each be allowed six hundred eighty (680) hours of pay at their respective straight time rates and three hundred forty (340) hours of pay at their respective time and one-half rates because of the aforesaid violations.

OPINION OF BOARD: This is a dispute initiated by the Organization on behalf of three Claimants who are Roadway Machine Operators. The Organization's claim is that the Carrier violated ~~the~~ Agreement in assigning hauling, filling and grading work to outside forces from February 17, 1983 through June 15, 1983, and that the Carrier 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 Carrier contends that notice of this work was given to the General Chairman in a letter dated May 6, 1981. The letter stated:

'Please accept this as Carrier's Notice under Article 36 of ~~the~~ BMWE Agreement of Carrier's intent to contract out the grading work of three 8800' receiving and departure tracks, two 5000' holding tracks, as well as four short servicing tracks in connection with the proposed additional trackage and servicing facilities for Kirby Yard at San Antonio, Texas.

'Carrier's forces will perform all other work incident to the installation of this additional trackage. Contracting is necessary account Carrier does not have the necessary available earth-moving equipment to perform this work.

"Copy of print is available in my office for **your** review."

The Carrier maintains that this notice covered the work **done** in 1981 and the additional **work** done in 1983. The Carrier states that the work to be done was shown in a blueprint which the Carrier would have made available to the Organization. The Organization **made** no effort to examine the blueprint, according to the Carrier. The Organization claims that the 1981 notice concerned track construction work but made no mention of the filling, grading, and oiling work which the Carrier did in 1983. The blueprint, according to the Organization **would** only have shown the area involved in the **work** to **be** done, it would not have constituted proper notice of the work itself.

After careful review of the record, the Board finds that the Carrier did not provide proper notice to the Organization of the 1983 work. Because this work clearly fell within the Agreement, notice was required. The Carrier's letter of May 6, 1981, did not **mention** or include this additional work. The Board rejects the Carrier's contention that the 1981 blueprint showed the work which was performed in 1983 **and** that, because this blueprint would have been made available to the Organization, the letter of ^{May 6} constituted notice of the later work. The language of Article 36 is clear and unambiguous in requiring notification "**in** writing" to the General Chairman. The blueprint in this case **does** not **fulfill** the requirement to give notice in writing. Because notice was **not** given, the Board finds that the Agreement was violated.

The Carrier states that its records show that the Claimants were recalled from furlough during the second period of March, 1983 **and** were employed during the rest of the time in question. The Claimants are entitled to pay **from** February 17, 1983, until they were recalled from furlough, and they shall be made whole for work lost at their respective straight time rates.

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.

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Claim sustained in accordance with the Opinion.

NATIONAL ~~RAILROAD~~ ADJUSTMENT BOARD
By Order of **Third** Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1985.