NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25694

THIRD DIVISION

Docket Number MW-25497

Echehard Muessiy, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Norfolk and Western Railway Company

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 between the General Chairman and either the Engineer Maintenance of Way or the Assistant to President as required by the May 8, 1957 Letter of Agreement, it assigned outside forces to paint Covel Bridge 366-2 beginning July 27, 1982 (System File V-TC-1392/MW-MU-82-54).

(2) As a consequence of the aforesaid violation, Mr. W. M. McGuire shall be allowed pay at his appropriate rate for an equal number of man-hours expended by outside forces in performing the work referred to in Part (1) hereof."

OPINION OF BOARD: The Organization contends that the Carrier violated the parties' May 8, 1957 Letter of Agreement when it failed to notify the General Chairman of its plans to contract out the work of painting Covel Bridge 366.2 at Covel, West Virginia, and hold a conference thereon.

The Carrier points out that this matter was conferenced with the General Chairman, who represents the Norfolk and Western BMWB employes and he confirmed his agreement that the bridge painting at Covel and three other locations could be contracted out by the Carrier. However, the bridge at Covel is on the former Virginian Railroad where the General Chairman who agreed to the project had joint jurisdiction with another General Chairman. Accordingly, the Carrier's intent to contract the Covel work should have been conferenced and notice provided to both General Chairmen. With respect to damages, the Carrier maintains that the Claimant suffered no monetary loss, thus, an award of damages would be a pure penalty not supported by the Rules of the current Agreement.

The record is clear that a breach of the Agreement has occurred, since the duly accredited representative for the Claimant's bargaining unit was not notified by the Carrier. Accordingly, we sustain Part 1 of the Claim. With respect to Part 2, the Board notes the particular facts and circumstances prevalent herein places weight on the fact that the one General Chairman was properly advised and agreed to the contracting out, notes the Claimant was actively employed during the entire period that the disputed work was being performed and, finally, notes that a reasonable conclusion may be drawn that there was no loss of potential earnings. In light of these factors, we will deny Part 2 of 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 in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever

Nancy J. Dever - Executive Secretary

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