

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25826
Docket Number MW-25731

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Houston Belt & Terminal Railway Company

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

(1) The Carrier violated the Agreement when it assigned outside forces to construct walkways between the tracks at Settegast Yard beginning January 31, 1983.

(2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it did not give the General Chairman advance written notice of its intention to contract said work.

(3) Furloughed Maintenance of Way Employees R. G. Bryant, S. Caballero, A. Sandoval, L. Flores, J. M. Jimenez, C. Washington, J. A. Singer, A. K. Thomas, E. Z. Garcia, J. A. Lopez, R. Z. Valadez and H. W. Griffin shall each be allowed pay at their respective rates for an equal proportionate share of the total number of man-hours expended by outside forces in performing the work described in Part (1) hereof.

OPINION OF BOARD: By letter of March 9, 1983 General Chairman Hawkes claimed Carrier violated the Agreement (specifically the Scope and Seniority Rules) by using a contractor to construct walkways between tracks at its Settegast Yard. After initial denial the Organization advanced the claim on March 23, 1983 stating Carrier had not furnished prior notice of intent to contract as required by Article IV of the Agreement. That Article states:

"In the event a carrier plans to contract out work within the scope of the applicable schedule agreement, the Carrier shall notify the General Chairman...in writing as far in advance...as is practicable and in any event not less than 15 days prior thereto...."

The Carrier responded the work was part of a \$20 million rehabilitation of the Yard and was encompassed within a notice of intention to subcontract that entire project given the Organization two years earlier. Carrier further contended it had neither the equipment or experienced personnel for this large scale project. After a May 12, 1983 conference on the property Carrier by letter reiterated those positions.

In its Ex Parte Submission Carrier reproduced an April 6, 1981 letter to General Chairman Hawkes. It states in part:

"The 1981-1982 improvement Program for the Houston Belt and Terminal Railway Company provides for improving and enlarging Settegast Yard in Houston, Texas. This work will include the construction of automatic switching leads, rail relay, yard expansion and the construction of a five story yardmaster's tower and two work and locker buildings."

In its Ex Parte Submission the Organization argued that although the Carrier stated it had given the General Chairman written notice it failed to submit any evidence in support of that contention during handling on the property. That failure was fatal, says the Organization, because a mere assertion does not constitute proof. While this Board agrees with that principal we do not believe it applies here. We find no evidence the Organization denied receiving the April, 1981 Notice in the handling on the property. More importantly the alleged 1981 notice was mailed to the same General Chairman that was handling this claim and Carrier informed him "...certainly you were advised of an intent some two years ago, of the large contracting involved in this Yard...." In this context we do not regard the claim of notice to be a mere assertion. Both letters were addressed to the same Officer of the Organization. The second clearly refers to the first and identifies it by subject (i.e. large contracting involved in this Yard) and by time (i.e. some two years ago). There is no contention the original letter was not received and had Carrier attached a copy of it we presumably would not be discussing it now. A copy was not attached but we believe the claimed notice was identified with sufficient clarity. It is generally not necessary to furnish the recipient of a letter with a copy thereof in order to rely upon it.

Of course the fact of notice must be distinguished from the extent of the notice. In its Rebuttal the Organization argues no notice was given regarding the work in question because the 1981 letter "makes absolutely no reference" to the work involved in the claim. Once again we must disagree. The construction of the specific walkways was not mentioned in the notice but the work to be done was said to include several projects, one of which was "yard expansion". In the view of this Board the construction of the walkways can fairly be considered an integral part of the "yard expansion" and we conclude the requisite notice was given.

Carrier contends this was a large project for which it lacked necessary equipment and experienced personnel and was of a type it was entitled to subcontract upon appropriate notice. This Board has found that notice was given. The record contains no real evidence regarding equipment or manpower. We conclude the evidence does not establish the Agreement was violated.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 13th day of January 1986.