

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26673
Docket Number MW-26261

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Maine Central Railroad Company
(Portland Terminal 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 an entrance ramp for a parking lot at Portland, Maine on February 4, 1983 (System Files MW-83-4 and MW-83-5).

(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) As a consequence of the aforesaid violations, Machine Operator F. C. Gallant and Truck Operator L. R. Jackson shall each be allowed eight (8) hours of pay at their respective straight time rates."

OPINION OF BOARD: This dispute is concerned with the contracting out of the construction of an entrance ramp to a new employee parking lot, including hauling gravel for the job. The Organization contends that the type of work in question has customarily been performed by employes in the Maintenance of Way Department and is clearly covered by the Scope Rule. Further it is argued that no notice of the intent to contract out the work was provided by Carrier. Carrier's defense in this matter rests on its urgent need to complete the task promptly and the lack of available appropriate equipment on the day in question. Further, it is pointed out that it is frequently necessary to supplement its regular forces with outside contractors in various construction projects.

The record of this case demonstrates Carrier's failure to comply with the provisions of Article IV of the May 17, 1968, National Agreement; no notice of the intent to subcontract was furnished to the Organization. Further, the work is normally considered to be within the Scope of the Agreement.

With respect to the remedy, both Claimants were fully employed on the date of the claimed work. While the Carrier's violation in this case is clear, it has been a well established principle of this Board to deny compensation for Article IV violations when no loss of earnings is demonstrated (see for example Third Division Award 23560). We will follow that doctrine in this dispute, with the caveat that repeated violations could well result in a different holding.

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 - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1987.