

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(Norfolk and Western Railway Company  
(formerly The Pittsburgh and West Virginia 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 perform masonry repair work in the McGugin Tunnel at Hickory, Pennsylvania September 20, 1985 through December 13, 1985 both dates inclusive (System File MW-ROK-85-8).

(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:

'\*\*\*Claimants Kopacko and Partridge be paid difference between their lower rated position and the foreman's rate. Claimants Whitaker and Cummins, Jr. be paid the difference between their lower rated position and the carpenter's rate. Claimants Gardner, Federer, Jr., Young, Anderson, Moreau, Bryner, McKindley, Ciesielski, Marsili, Phillis, Digman and Uscio be paid the carpenter's rate. All claimants be paid (8) eight hours per day each day the contractor worked on tunnel starting September 20, 1985 and ending December 13, 1985, for a total of (480) four hundred and eighty hours each.'"

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The work involved in this Claim concerns repair of linings in the McGugin Tunnel, Hickory, Pennsylvania. In Third Division Award 25860 we considered a similar dispute involving the same type activity in the Hickory Tunnel, Hickory, Pennsylvania.

The Organization urges that we follow Award 25860 and sustain this Claim.

Carrier contends that it gave proper notice that the tunnel repair work was to be contracted out and that the Organization does not have an exclusive right to repair tunnel linings on the district involved. Carrier also contends that its employees do not possess the necessary skills, nor does Carrier have available the special equipment necessary to properly complete the work. With regard to Award 25860, Carrier argues that it should not control because certain of its underpinnings are demonstrably defective.

We are not persuaded that the notice dated May 29, 1984, covers the work involved in this Claim. Carrier suggests that the work covered by the May 29 notice commenced on July 23, 1984, and continued until December 3, 1984, when it was discontinued because of inclement weather. The work covered by this Claim, in the period between September 20, 1985 and December 13, 1985, was, it is alleged, merely a continuation of the work covered by the earlier notice. There surely are situations where a single notice can cover two separate work periods caused by temporary cessation of a project because of inclement weather. However, the time frame involved in this matter suggests that this is not one of them. Carrier maintains that it was required to halt the project in December because of inclement weather, but it waited almost ten months before getting back to it. Resumption of work in late September on a project halted in early December is, without more, just is not a persuasive indicator that the two are actually one event of contracting out work.

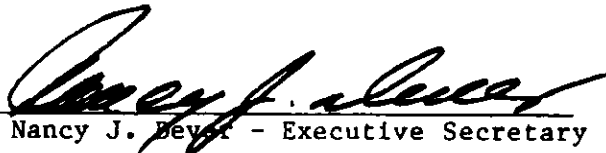
Nonetheless, Award 25860 appears controlling here. It has been carefully examined and not found to be in palpable error. Moreover, the facts before us in this Claim are closely akin to those under review in Award 25860. Accordingly, we will sustain this Claim for the wage losses incurred by those employees named in the Statement of Claim. Each Claimant who worked during the Claim period is to be made whole for the difference in pay between the job held at the time the contractor worked on the property and the job they could have held if additional forces had been put on to do the tunnel work. Each furloughed Claimant is to be made whole for the lost work opportunity occurring as a result of using a contractor to effect tunnel repairs in the McGugin Tunnel between September 20, 1985, and December 13, 1985.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 27th day of April 1990.