

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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 Agreement was violated when the Carrier assigned outside contractors to repair the roof on the main office building at Rook, Pennsylvania on December 17, 18, 19, 20, 21 and 22, 1986 (Carrier's File MW-ROK-87-1).

(2) The Agreement was also violated when the Carrier failed to meet with the General Chairman to discuss matters relating to said contracting transaction in accordance with Article IV of the May 17, 1968 National Agreement.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, furloughed Carpenters C. L. Gardner, R. Federer, Jr., J. W. Young and J. A. Anderson shall each be allowed forty-eight (48) hours of pay at the carpenter's straight time rate."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

On November 25, 1986, the Carrier gave the General Chairman written notice of its intent to contract out roof repair work on Office Building No. 56-2-P at Rook, Pa. The sole reason given for the proposed contracting was that, "The Carrier does not possess the necessary skilled manpower, supervision or equipment to satisfactorily accomplish a project of this nature." On December 1, 1986, the General Chairman wrote the Carrier to advise of the Organization's objections and requesting a meeting in accordance with Article IV of the National Agreement dated May 17, 1968.

The Carrier in turn advised the General Chairman by letter dated December 15, 1986, that the General Supervisor, Bridges and Buildings "will contact you in the near future to discuss this matter." The record shows, however, that no such meeting was arranged by the Carrier. Further, the roof repair work was performed, as reported by the Organization, immediately thereafter on December 17-22, 1986.

Article IV reads in pertinent part as follows:

"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 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.

If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the carrier shall promptly meet with him for that purpose. Said carrier and organization representatives shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached the carrier may nevertheless proceed with said contracting, and the organization may file and progress claims in connection therewith. . . ."

Whether through inadvertence or otherwise, the facts of record demonstrate that the Carrier violated Article IV in its failure to "promptly meet" with the General Chairman to "make a good faith attempt to reach an understanding." On this basis, the Claim must be sustained in favor of the furloughed Claimants who, conceivably as a result of such conference, may have had the opportunity to perform the work.

Despite its admitted lapse, the Carrier argues in defense of its position on other bases. These arguments, however, do not have such substantial merit as to obviate the need to discuss the matter with the Organization in conference as prescribed by Article IV. The alleged lack of skilled manpower and equipment and the need for warranty are clearly subjects for discussion and review. Likewise, the Carrier's allegation of the Organization's lack of exclusive right to such work is beside the point. That work of this nature is generally "within the scope" of the Organization's Agreement cannot be denied. As stated in Third Division Award 27012:

"The Board finds that the Carrier's insistence on an exclusivity test is not well founded. Such may be the critical point in other disputes, such as determining which class or craft of the Carrier's employees may be entitled to perform certain work. Here, however, a different test is applied. The Carrier is obliged to make notification where work to be contracted out is 'within the scope' of the Organization's Agreement. . . .

The Scope Rule quoted above recognizes the right of the Carrier to contract out work, but at the same time it places the Carrier under the special obligation of pre-notification and, if requested, discussion and an 'attempt to reach an understanding' with the Organization. Whether or not the work here involved would have eventually been contracted out, assigned to another craft or class, or assigned to Maintenance of Way employees is not the principal point and indeed need not be resolved here."

In addition, the Carrier challenges the extent of the monetary Claim made by the Organization. The Board directs the Carrier to furnish promptly proof of the actual number of employees and hours expended in the work. Should the Carrier fail to provide promptly such information, the Claim will be sustained as presented. See Third Division Award 26072 to similar effect.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deyer - Executive Secretary

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