

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Missouri Pacific Railroad 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 repair work on Bridge 3125 at Guion, Arkansas beginning July 20, 1987 (Carrier's File 870714).

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

(3) As a consequence of the violations referred in Parts (1) and/or (2) above, Foreman G. F. Ribbing, Assistant Foreman N. J. Bader, Carpenters K. D. Lack, C. R. Brown and Hoisting Engineers G. J. Bader and R. L. Hoots shall each be allowed pay at their respective rates for eight (8) hours per work day, plus all overtime and holidays lost, beginning July 20, 1987 and continuing until such time as the violation is corrected."

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 were given due notice of hearing thereon.

Beginning July 20, 1987, the Carrier used a contractor to perform work in connection with bridge repair near Guion, Arkansas. The Organization asserts the Carrier's actions were in violation of the Agreement because (1) the work is reserved exclusively to employees covered by the Agreement, (2)

the Agreement does not permit such work to be contracted out in the absence of extenuating circumstances, and (3) the Carrier failed to notify the General Chairman of its intent to contract out the work. The Carrier has denied the work in question is reserved exclusively to covered employees and, therefore, it was under no obligation to serve a notice upon the Organization. During the handling of this dispute on the property, the Carrier did not challenge the Organization's assertion that no notice was issued.

Article IV of the May 17, 1968, National Agreement requires 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."

The Carrier bases its defense upon its position the Scope Rule is general in nature, and, thereby, not the type of rule which, on its face, grants exclusive jurisdiction of particular work to the covered employees. In the absence of such an express grant, continues the Carrier, the Organization must meet its burden of proving that the work has customarily and traditionally been performed by its members throughout the system to the exclusion of all others. The Carrier asserts it is required to serve notice under Article IV only when there is a showing that the work is within the scope of the Agreement. The Organization, for its part, submits that the work is reserved to the employees specifically by the Rules of the Agreement as well as past practice. The Organization argues, however, that this issue need not be reached because the Carrier is obligated to serve the notice regardless.

The weight of arbitral authority agrees with the Organization. In Third Division Award 18305, this Board held:

"The first paragraph of said Article IV deals with the contracting out of work 'within the scope of the applicable schedule agreement.' It does not say the contracting out of work reserved exclusively to a craft by history, custom, and tradition. This Board is not empowered to add to, subtract from, or alter an existing agreement. We therefore conclude that inasmuch as Maintenance of Way Employees have in the past performed such work as is in dispute here, then said work being within the scope of the applicable Agreement before us, Carrier violated the terms thereof by failing to notify the General Chairman within 15 days prior to the contracting out of said work...."

Award 18305 provided a basis for a long series of Awards of this Board holding that the provisions of Article IV deal with work which is within the scope of the Agreement, but that the Organization is not required to show that the work had been performed exclusively to prove a violation of Article IV when no notice has been served. It is sufficient in this case that we find the work performed by the contractor is of the nature which has been assigned to employees under the Agreement. The Carrier, therefore, violated the Agreement by failing to serve notice of its intent to contract out the work.


The Carrier has argued that damages should be limited to any Claimants who were not fully employed during the period of time the contractor worked. The Organization submits that all Claimants should be entitled to damages. This Board has not been as consistent with respect to the question of damages for such a violation. To be sure, several of the Awards relied upon by the Organization in its argument that notice was required limit damages to furloughed employees. We find nothing in the record of this case to warrant additional compensation to any Claimants for time when they were already fully employed. Accordingly, we direct the Claim be sustained only with respect to those Claimants who actually suffered wage loss as a result of unemployment during the time period the work was performed by the contractor.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deaver - Executive Secretary

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