

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 28989  
Docket No. MW-27411  
91-3-86-3-652

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(Southern Pacific Transportation Company (Western Lines)

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 paving work on crossings in Tucson Yards on December 12 and 14, 1984 and when it assigned outside forces to remove, haul and replace track subgrade material on Track No. 2 at the Fueling Station in Tucson Yards on December 26, 27 and 31, 1984 and January 2, 1985 (System File MofW 152-1024).

(2) The Carrier also violated Article IV of the National Agreement of May 17, 1968 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, Messrs. L. C. Rounsaville, G. L. Nelson, C. H. Rowland and C. Spsychalski shall each be allowed an additional forty-eight (48) hours of pay at their respective straight time rates."

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 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 December 12 and 14, 1984, Carrier contracted with an outside Contractor to perform paving work at two grade crossings in the Tucson Yards. On December 26, 27, 31, 1984, and January 2, 1985, it contracted with an outside firm to remove and replace sub-grade material on Track 2 at the fueling station in the Tucson Yards.

The Organization contends that Carrier violated the May 17, 1968, National Agreement by failing to notify the General Chairman of its intent to subcontract work coming under the Scope of the Schedule Agreement (as is required by Article IV, Contracting Out).

Carrier contends that the work in question is not work exclusively reserved to the Organization at the location where it was being performed (Tucson, Arizona); consequently, Carrier was under no obligation to notify the General Chairman of its intent to subcontract the work and the instant claim has no merit.

This Board has reviewed the record, together with many Awards on the issue submitted by each side. A review of this material reveals that the more reasoned Awards require that even though the work in question is not work exclusively reserved to employees represented by the Organization, but is work generally performed by them, the General Chairman should be notified of Carrier's intent to subcontract, as required by Article IV.

This review also compels this Board to conclude that in instances where as here, Claimants are fully employed, the failure to notify the General Chairman of the intent to subcontract cannot be translated into a monetary award. This Board has stated many times that a sustaining Award without a penalty against Carrier for violating the Agreement is a hollow victory. The Board, however, does not have the authority to award monetary damages where no contract authority exists to support it. That is the situation we find ourselves in in this case.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of September 1991.