

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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 Agreement was violated when the Carrier assigned outside forces to perform repairs and tests to the waste water lines from the main line fueling station at the Hump Yard in North Little Rock, Arkansas from October 20 through 24, 27 through 31, and November 3 through 7, 10 through 14, and 17 through 19, 1986 (Carrier's File 870186).

(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 to outside forces.

(3) As a consequence of the violation referred to in Parts (1) and/or (2) above, Assistant Water Service Foreman W. R. Bradford shall be allowed one hundred eighty-four (184) hours' pay at his respective 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 specified dates in October and November 1986, the Carrier engaged an outside contractor to perform repairs and tests on the waste water lines at facilities at North Little Rock, Arkansas. The Carrier did not advise the Organization in advance concerning this undertaking.

Because of the failure to provide notice and because the work is claimed to be "within the scope" of work covered by the Organization, the Organization seeks pay for the Claimant, a furloughed Assistant Water Service Foreman, for 184 hours, the time alleged to be involved by the outside contractor.

Article IV—Contracting Out of the May 17, 1968 Agreement 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.

Nothing in this Article IV shall affect the existing rights of either party in connection with contracting out. Its purpose is to require the carrier to give advance notice and, if requested, to meet with the General Chairman or his representative to discuss and if possible reach an understanding in connection therewith...."

Among the defenses of the Carrier is the contention that the "general" Scope Rule does not provide the Organization with the "exclusive" right to perform the work in question. The exclusivity test, while significant in reference to assignment of work among various crafts and classifications, is not of direct application. On the property, the Organization pointed to a Memorandum of Understanding dated November 1, 1955, listing work of this nature to be "allocated" to Maintenance of Way forces. Other evidence of similar work performed by employees represented by the Organization were also presented.

In its Submission, the Carrier provides a list of 139 projects given to outside forces over many years. The difficulty here, as pointed out by the Organization, is that this information, to the degree it is applicable, was not offered during the claim handling procedure and thus may not be considered by the Board.

The underlying requirement of Article IV concerns the necessity of advance notice, which was not provided here. The Carrier does not convincingly argue that the work was not "within the scope of the applicable agreement." Questions as to employee qualification to perform the work, availability of equipment, etc., are proper for review if and when a meeting is requested by the Organization after notice.

The Carrier argued that there was "no justification" for the claim in the amount of 184 hours. However, the Carrier failed to suggest what number of hours would be appropriate, in the event merit was found in the Claim.

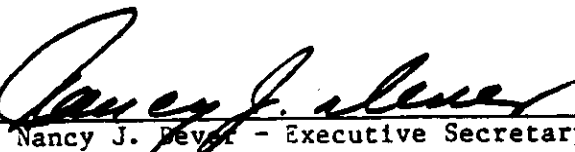
Based on the failure to give advance notice and the lack of proof that the work is clearly outside the Scope of the Agreement, the Claim must be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 28th day of October 1991.