

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned outside forces (Long Fence Company) to install a fence in Benning Yard, Washington, D.C. on November 7, 8, 9, 14 and 15, 1988 (System Docket MW-307).

(2) The Agreement was further violated when the Carrier failed to timely and properly notify and confer with the General Chairman concerning its intention to contract out said work as required by the Scope Rule.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, B&B Mechanic J. Shipley shall be allowed forty (40) hours of pay at the B&B mechanic'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.

At issue in this claim is the subcontracting of the construction of an 8' high chain link fence, 2,400' in length, at the Benning Yard in the vicinity of the Washington Metro Station. The work was performed on November 7, 8, 9, 14, and 15, 1988 by the employees of the Long Fence Company.

The Organization initially alleges that Carrier failed to give the General Chairman timely notice of its intent to contract out the work, in accordance with the Scope Rule in the Parties' Agreement. The record reveals, however, that a notice was in fact sent to the General Chairman on September 15, 1988, and that a meeting between the Parties' representatives was subsequently held.

The Organization further maintained in its Submission that Carrier acted in bad faith, having already committed itself to a contract transaction with Long Fence Company before notifying the Organization. While this Board views such an allegation with great seriousness, we find no indication in the record that this argument was raised on the property. As a consequence, we cannot consider it at this level. (The same holds true for Carrier's contention before the Board that the Organization's claim was procedurally defective.)

The Board finds support for the Organization's contention that the work in question fell within the Scope of the Agreement and thus was properly subject to the procedures provided for subcontracting. The fact that Carrier notified the Organization of its intent to contract out the work indicates that it too recognized that this was the case.

In the final analysis, Carrier concluded that since this was a large project, there was a certain urgency in getting it completed, and current forces were elsewhere employed, it was necessary to utilize outside forces. Under all of the circumstances present here, this Board cannot dispute that decision.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dewar - Executive Secretary

Dated at Chicago, Illinois, this 7th day of May 1992.