

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Union 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 the work of building concrete forms and pouring and finishing concrete runways in the Los Angeles, California Yards from December 9, 1986 through and including April 24, 1987 (System File M-564/870502).

(2) The Agreement was further violated when the Carrier did not give the General Chairman prior written notification of its plan to assign said work to outside forces.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Bridge and Building Carpenters R. O. Lee, T. Moreno, J. A. Rymer, J. D. Blankenship, E. L. Baker, J. R. Empey, R. L. Wolfe, P. K. Chamberlain and R. Loffredo shall each be allowed eight hundred ninety-three (893) hours of pay at their respective carpenter's 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 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 waived right of appearance at hearing thereon.

The instant dispute concerns the Carrier's decision to assign outside forces to perform work constructing concrete runways at the East Los Angeles Yards beginning December 9, 1986. The issue is whether the Carrier violated the Agreement when, without giving the General Chairman the requisite advance notice, it contracted out the work. The Organization contends that the disputed work is clearly encompassed within the Scope of the Agreement and has customarily and historically been performed by its employees. Carrier argues that Claimants did not possess the skills required to complete the project and Carrier should not be forced to "piecemeal" out work; that advance notice was given; and that the Claimants, with one exception, were fully employed and did not show any loss of earnings during the period in question.

With respect to Carrier's first argument, our review of the record shows an absence of any probative evidence that the concrete work involved in this instance was of such a nature that it could not have been performed by its employees or dissociated from the total rehabilitation project at the East Los Angeles Yards. It is our view, therefore, that Carrier failed to meet its burden of establishing that affirmative defense.

As to the question of notice, we note that Carrier did not offer any evidence during the handling of this dispute on the property that it in fact supplied to the General Chairman the necessary notification. Post-property evidence and arguments advanced before this Board for the first time may not be considered. If it was the Carrier's intent to argue that proper notice was submitted, it should have so documented on the property.

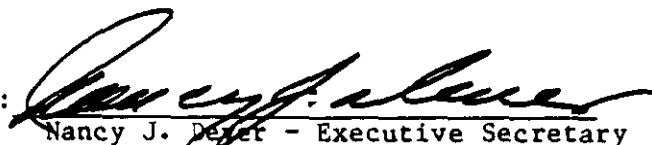
Accordingly, we find that the Carrier violated the Agreement when it contracted out the disputed work without the required notice. The claim at bar was filed by the Organization on behalf of nine employees. As to all but Claimant Loffredo, the record established that the employees were fully employed and suffered no loss of earnings as a result of the improper contracting out. Their claim for monetary relief must be denied. With reference to Claimant Loffredo, who was furloughed at the time of the events precipitating this dispute, we direct that the parties review the work records to determine the number of hours necessary to provide a make-whole remedy for his lost work opportunity.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1992.