

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29512
Docket No. MW-29189
93-3-90-3-57

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance
(of Way Employees
(St. Louis Southwestern Railway 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 roofing work on the Maintenance of Way, Car Department Building at Liberal, Kansas on October 17 through 21, 1988 (System File MW-89-13-CB/477-86-A).

(2) The Carrier also violated the Agreement when it did not give the General Chairman proper advance written notice of its intention to contract out the work referred to in Part (1) hereof as stipulated in Article 33 and the December 11, 1981 Letter of Agreement.

(3) As a consequence of the violations referred to in either Part (1) and/or Part (2) hereof, B&B Department employees D. L. Idleman, B. E. Aldridge, D. A. Schurle, R. E. Shoemaker and M. A. Edwards shall each be allowed pay, at their respective straight time rates of pay, for an equal proportionate share of the man-hours expended by the employees of the outside concern performing the work described in Part (1) hereof."

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.

On August 5, 1988, Carrier, as required by Article 33 of the Agreement, served "Notice No. 14" advising that it intended to contract the work of installing a new roof on the Maintenance of Way-Mechanical Department Building at Liberal Kansas. Carrier claimed that it was necessary to have this work performed by a contractor because it lacked the skilled supervision to perform the work. The Organization immediately challenged the notice on the grounds that it was not timely - the contract had already been let so good faith discussions on the notice could not obtain and the work had started before the notice was served.

Carrier is not privileged to contract out work within the scope of the Agreement without notifying the General Chairman in advance of the date of the contracting transaction. From the start of this transaction the Organization placed the Carrier on notice that it understood that the contract was let before the notice was given, thus both the letter and intent of Article 33 were breached because Carrier in such circumstances could not make a good faith effort to attempt to reach an understanding concerning the contract. Carrier's singular defense to this contention, on the property and before this Board, has been that the Organization's contention "is merely an unsupported allegation on their part and has not been documented as factual." In matters of this nature, Carrier has within its possession material and documents, readily available, which would easily disprove the Organization's contention if it were not factual. For instance, a dated copy of the contract entered into with the roofer would establish whether or not the Article 33 notice was served before the contract was let or after the Organization had an opportunity to meet and discuss the issue as contemplated by the Rule. Carrier's failure to offer this evidence, when it most certainly was available, causes its denial to be suspect and incomplete. >

It is the Board's view that the notice requirements of Article 33 have not been satisfied. Notices offered after the fact specifically violate the requirement that they be given not less than 15 days prior to the transaction. Moreover, notices offered after the fact make it impossible to have good faith attempts to reach an understanding concerning the contracting. The Agreement was violated. The Claim will be sustained.

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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 3rd day of February 1993.