

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30019  
Docket No. MW-30120  
94-3-91-3-554

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(CSX Transportation, Inc. (former Seaboard  
(System Railroad)

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

- (1) The Carrier violated the Agreement when, without a conference having been held between the Chief Engineering Officer and the General Chairman as required by Rule 2, it contracted with and allowed an outside concern (Case Power and Equipment of Jacksonville, Florida) to repair a Carrier owned backhoe (Case Model 580D, Serial Number 9055024-TBH 4920) from June 1 up to and including June 29, 1990 [System File 90-74/12(90-768) SSY].
- (2) As a consequence of the aforesaid violation, Group B Mechanics B. J. Rutherford and W. H. Rowell shall each be allowed pay at their respective straight time rate for an equal proportionate share of the one hundred fifty (150) man-hours expended by the outside concern."

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 employe 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.

During June 1990, the Carrier contracted with Case Power & Equipment of Jacksonville, Florida, to perform extensive maintenance work on a backhoe used by its Maintenance of Way and

Structures Department. This work was contracted out without advance notice to the Organization. According to the Organization, this work took 150 man-hours and consisted of repacking at least ten hydraulic cylinders, replacing pins and bushings in the dipper boom and bucket, swing tower, swing cylinders and boom base, tightening tractor mounting bolts, replacing the operator's seat, repairing the backhoe valve bank, the brake system, and differential lock, the clutch, the steering system, the hydraulic and fuel tanks, reworking the front end and rebuilding the engine. The Organization asserts the work of repacking, replacing, reworking, rebuilding, and repairing of Maintenance of Way roadway equipment is reserved to employees covered by the Agreement. It claims the Carrier, when it contracted out this work, violated Rule 2 of the Agreement, which reads, in pertinent part, as follows:

"CONTRACTING

This Agreement requires that all maintenance work in the Maintenance of Way and Structures Department is to be performed by employees subject to this Agreement except it is recognized that, in specific instances, certain work that is to be performed requires special skills not possessed by the employees and the use of special equipment not owned by or available to the Carrier. In such instances, the Chief Engineering Officer and the General Chairman will confer and reach an understanding setting forth the conditions under which the work will be performed."

The Carrier responds by stating it has been the practice for at least ten years to contract out repair work on tractors and backhoes when such work was extensive. It submits there was already a considerable amount of overtime being performed in the Waycross Shop during this time period and that the present force would have been unable to absorb the additional work.

Even if there had been a violation of the Rule, argues the Carrier, the Claimants would not be entitled to the remedy sought because they were already fully employed. Furthermore, if the work were to be performed on overtime, the Carrier insists the Claimants would not have been eligible. It notes that Claimant Rutherford had been removed from the overtime board due to his failure to protect an earlier job. It also states Claimant Rowell had removed himself from the overtime board, not desiring any extra work.

The Carrier does not deny that the work involved is work belonging to covered employees. At issue is whether the Carrier was privileged to contract out this work without notice to or

conference with the Organization. In this regard, Rule 2 is clear and unambiguous. Covered work may not be contracted out without following the procedures in the Rule. Because the Rule is clear and unambiguous, the Carrier's reference to past practice is irrelevant. We must enforce the Rule as it is written.

Although the Carrier argues it lacked sufficient manpower to perform this work, we consider this to be an argument it should have made to the Organization to justify its need to contract out. This is precisely why the Rule requires advance notice. It gives the parties an opportunity to consider the Carrier's reasons for contracting out, as well as the Organization's interests with regard to its members. The Carrier, however, skipped over this step and, in doing so, violated the Rule.

The Carrier's objections regarding awarding relief to these Claimants is well taken. Had the work been performed on an overtime basis, the Claimants would not have been eligible for it. On the other hand, they would not have earned any more had the work been performed at straight time. Although we consider these to be valid arguments, we note that the violation of the Agreement occurred because the Carrier failed to notify the Organization and consult with it prior to contracting out. It is certainly conceivable that, under the circumstances, the Organization might have been agreeable to allowing the Carrier to contract out the work. But because the Carrier failed to follow this procedure, we must afford a remedy. Accordingly, we deem it appropriate to award the Claimants ten per cent (10%) of the time worked by the contractor or 7.5 hours' pay at the straight time rate for each Claimant.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Catherine Loughrin  
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 21st day of January 1994.