

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 30035  
Docket No. MW-29618  
94-3-90-3-602

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 Employes  
(  
(Elgin, Joilet and Eastern Railway Company

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

- (1) The Carrier violated the Agreement when it assigned an outside contractor (Dyer Construction Company) to perform Bridge and Building Department work of replacing Culvert No. 169 located just south of 111th Street in Normantown, Illinois on April 4 and 5, 1989 and the capping of the old culvert on April 6, 1989 (System File BJ-10-89/UM-26-89).
- (2) As a consequence of the aforesaid violation, B&B Carpenter Foreman O. Salaiz, B&B Carpenters J. Quirk and B. Ruzich and Crane Operators G. Haggerty and J. Barnes shall each receive twenty (20) hours of pay at their respective time and one-half rates of pay."

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.

By letter dated December 23, 1988, the Carrier wrote to the General Chairman, stating:

"This is to notify that the Carrier intends to contract out the below-listed work due to the magnitude of the planned 1989 Construction

Project on the Joliet and Gary Divisions requiring all available employees to be assigned to work in other areas:

\* \* \*

BR-169      NORMANTOWN, ILLINOIS      REPLACEMENT OF  
EXISTING CULVERT"

Such notice was in accord with Article IV of the May 17, 1968 National Agreement [Rule 6(c)], which states 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."

In response to a timely request from the General Chairman, a meeting was set for January 18, 1989, but this meeting was postponed by the Carrier and not held until February 1989. However, it was determined that contract for the work had already been let on January 10, 1989, prior to both the initial and later dates for the conference.

The record shows substantial evidence that the work was "within the scope of the applicable schedule agreement", even if there is evidence that such work was not consistently performed by Carrier forces. The fact that the contract was let prior to the requested discussion represents a denial of the opportunity to review the matter in "good faith", as required by Rule 6(c). On this basis, the sustaining Award is required.

As to remedy, the Carrier points to Rule 58, which states that "time claims shall be confined to the actual pecuniary loss." Since the Claimants were fully employed, the Carrier argues that no monetary remedy would be appropriate. The Board does not agree. Assuming that a timely conference had occurred prior to letting of the contract, additional work may have been available to the Claimants (or others similarly situated). Whether this work would have been performed by such employees or by adding to the force would be the Carrier's option, but "pecuniary loss" can be demonstrated. However, payment at the straight-time rate, rather than the claimed time and one-half rate, is appropriate.

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 17th day of February 1994.