

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30267
Docket No. MW-30038
94-3-91-3-439

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former
(Missouri Pacific Railroad Company)

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

- (1) The Agreement was violated when the Carrier assigned outside forces (Traylor and Sons Contracting) with one (1) backhoe with an operator and one (1) dump truck with an operator to perform crossing work and to install switch ties west from Marshall, Texas, beginning April 26, 1990, and continuing through June 22, 1990 (Carrier's File 900535 MPR).
- (2) The Agreement was further violated when the Carrier failed and refused to furnish the General Chairman with advance written notice of its intention to contract out said work as required by Article IV and the December 11, 1981, Letter of Agreement.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Red River Division Trackman Driver J. G. Milton shall be allowed, at his respective time and one-half rate of pay, all time worked by the contractor forces beginning April 26 through June 22, 1990."

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 employee 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.

This dispute centers upon Carrier's alleged violation of the Agreement when it "assigned outside forces to perform crossing work and to install switch ties", and, "failed and refused to furnish the General Chairman with advance written notice to contract out said work.". Beginning April 9, 1990, through June 22, 1990, Traylor and Sons Contracting performed crossing work and installed switch ties west from Marshall, Texas, toward Grand Saline, Texas, (MP 141 - 153). One backhoe and an operator and one dump truck and an operator constituted contractor forces who worked "in conjunction with" Carrier forces.

On June 25, 1990, the Organization filed the following claim:

"Time is being claimed in behalf of Red River Division Trackman Driver J. G. Milton, SSN 451-86-0872, beginning April 26, 1990, at time and one-half rate and continuing so long as Traylor and Sons Contracting performs non emergency work belonging to the Maintenance of Way employes. Said contractor has been working West from Marshall, Texas, performing crossing work and installing switch ties using one (1) backhoe with operator and one (1) dump truck with operator.

This work which has traditionally and historically been performed by Maintenance of Way employes and Carrier is aware of the places where equipment can be procured if it does not own the needed machinery. The American Railroad Maintenance Equipment, Inc. Company of Mitchell, Illinois, and the Victor L. Phillips Company of Kansas City, Missouri, are two such places where Carrier can obtain such needed equipment.

Therefore, it is our contention that Carrier is in violation of certain Rules of our current Agreement, especially Scope, Rules 1, 2, 10, 11, and 14. Carrier is also in violation of Article IV of the May 17, 1968 National Agreement in that Carrier failed to notify me as General Chairman of the intent to contract the work in question, and the December 11, 1981 letter of good faith signed by Charles I. Hopkins, Jr., Chairman of the National Railway Labor Conference, in which Carrier agreed they would make good faith efforts to reduce sub contracting and procure rental equipment to be operated by Carrier employees."

Carrier denied the claim asserting that it was advanced "without ample substance, and did not offer dates or locations where the violation is claimed."

In subsequent correspondence, the Organization reasserted that the work in dispute "is routine work normally performed by the Maintenance of Way employees on a daily basis." The Organization further submitted that if it was not possible to perform the work in dispute during regular working hours, the work should have been "made available to Claimant Milton after regular working hours or on weekends or his rest days."

In its reply, Carrier stated:

"At the outset, I am advised that this project began at MP 141 on April 9, 1990, yet you failed to file your claim until June 25, 1990. While in your original claim you filed it as a continuing claim, obviously to avoid any procedural argument, it nonetheless is noted in your appeal you have asserted the claim period as being April 26 - June 22, 1990, and it was, therefore, not a continuing claim but occurred during specific dates and you were apparently aware of this at the time you filed your claim. For the reason this is not a continuing claim, your claim must be considered defective in accordance with Agreement Rule 12."

Carrier further submitted that contractor forces were working in conjunction with Carrier forces, and "assisted" with the work at issue. Finally, Carrier argued that there are "no residual implied restrictions" with respect to contracting out the disputed work, and that Claimant was "fully employed throughout the claim period and has not suffered the monetary loss you allege."

On June 25, 1990, the Organization filed a claim "beginning April 26, 1990, at time and one half rate and continuing so long as Traylor and Sons Contracting performs non-emergency work belonging to the Maintenance of Way Employees." In this initial communication the Organization asserted that the claim was a "continuing" violation. However, in subsequent correspondence, the Organization stated that the claim was time specific commencing April 26 and continuing through June 22, 1990.

In correspondence dated November 19, 1990, Carrier submitted that the work at issue had actually commenced on April 9, 1990, rather than April 26, 1990. The Organization did not dispute that assertion in subsequent correspondence, nor did it dispute the fact during a conference held later on the property. Therefore, this Board must assume that the work in dispute did commence on April 9, rather than April 26, 1990, as the Organization originally claimed. According to Rule 12 of the Agreement, the Organization's June 25, 1990, claim was some two weeks tardy. This claim is dismissed.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois this 19th day of July 1994.