

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30977
Docket No. MW-30637
95-3-92-3-409

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
(
(CSX Transportation, Inc. (former Louisville
(and Nashville 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 (Watkins Door Company) to perform Bridge and Building Subdepartment work (oiling and greasing runners on overhead doors, changing door panels and door tracks) at the Diesel Shop and turntable areas of the Round House at Radnor Yard, Nashville, Tennessee on September 17 through October 11, 1990, and continuing. [System File 10 (86)(90)/12(91-127) LNR].
- (2) The Carrier further violated the Agreement when it assigned outside forces (Watkins Door Company) to perform Bridge and Building Subdepartment work (dismantled and installed a new door and made repairs to other doors) in the Pipefitters Shop at the Round house at Radnor Yard, Nashville, Tennessee on October 22, 23, 24, and 25, 1990. [System File 10 (88)(90)/12(91-130)].
- (3) The Carrier further violated the Agreement when it assigned outside forces (Watkins Door Company) to perform Bridge and Building Subdepartment work (hung a new roll-up door) at the Traction Motor area, east side of the Round House at Radnor Yard, Nashville, Tennessee, on October 31, 1990. [System File 10 (88)(90)/12(91-129)].
- (4) The Carrier further violated the Agreement when it assigned outside forces (Watkins Door Company) to perform Bridge and Building Subdepartment work (install, repair and

maintain roll-up doors) in the Round House at Radnor Yard, Nashville, Tennessee on November 13, 14, 15, 19 and 20, 1990. [System File 11 (2)(91/12)(91-421)].

- (5) The Carrier further violated the Agreement when it failed to give the General Chairman fifteen (15) days' advance written notice of its intent to contract out the work described in Parts (1), (2), (3), and (4) above as required by Article IV of the May 17, 1968 National Agreement.
- (6) As a consequence of the violations referred to in Parts (1) and/or (5) above, Claimants I. Y. Martin and L. A. Butler shall each be allowed eight (8) hours' pay at their respective straight time rates of pay for each day worked by the outside contractor.
- (7) As a consequence of the violations referred to in Parts (2) and/or (5) above, Claimants R. D. Nicholas and G. C. Stroud shall each be allowed eight (8) hours' pay at their respective straight time rates of pay for each day worked by the outside contractor.
- (8) As a consequence of the violations referred to in Parts (3) and/or (5) above, Claimants R. D. Nicholas and G. C. Stroud shall each be allowed five (5) hours' pay at their respective straight time rates of pay and two (2) hours' pay at their respective time and one-half rates of pay for the work performed by the outside contractor.
- (9) As a consequence of the violations referred to in Parts (4) and/or (5) above, Claimants S. J. Smith and R. D. Nicholas shall each be allowed eight (8) hours pay at their respective straight time rates of pay for each day worked by the outside contractor."

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.

I. Martin, L. Butler, R. Nicholas, G. Stroud and S. Smith (Claimants) are employed by Carrier in the B&B Subdepartment. All were regularly assigned to B&B Gang 6MP3, Radnor Yard, Nashville, Tennessee. Each of the claims represents work which was performed at Radnor Yard.

On September 17, 1990 Carrier contracted outside forces (Watkins Door Company) to perform maintenance work (oiling and greasing door runners, and changing worn door panels and door tracks) at the Diesel Shop and the turntable areas of the Roundhouse. In late October 1990, Carrier further contracted Watkins Door Company to dismantle and install overhead doors at the Pipefitters Shop.

On October 31, 1990, Watkins Door Company installed a new overhead door at the Traction Motor area at Radnor Yard. Likewise, on November 13, 14, 15, 19 and 20, 1990, Watkins Door Company "installed, repaired and performed maintenance work" on overhead doors in the Round House.

The Organization disputed Carrier's "decision to assign outside forces to perform B&B work." The Organization maintained that Carrier had violated the Scope Rule asserting: "B&B work of this character has been assigned to and performed by B&B forces." In addition, the Organization cited "advance notice rules" in Article IV, which require that when Carrier plans to contract out work within the Scope of the Agreement, it must notify the General Chairman, in writing at least 15 days in advance. According to the Organization, Carrier's undisputed failure to do so dictates a sustaining award.

For its part, Carrier asserted that the Organization's "measure of producing any substantial evidence to demonstrate a violation of the controlling Agreement is woefully shy of the standards set by the Board." Carrier asserted that "this work does not accrue to the B&B Subdepartment," and that a review of Rule 41 will not reveal "any work consisting of service doors, roll-up doors, or any other specialized door system reserved to the Organization." Carrier did not refute the fact that the Organization was not afforded the 15 day notification with respect to the work at issue. Carrier maintained that the work at issue

required "specialized tools and equipment," which Claimants did not have "access to." Therefore, Carrier submits that it was not necessary to afford the Organization 15 days notice as called for in Article IV. Finally, Carrier asserts that Claimants were not "monetarily damaged" on the dates for which the claims were made, and therefore, are not entitled to "windfall compensation."

Due to Carrier's failure to afford the Organization 15 days notice and opportunity for discussion, as provided for in Article IV of the Agreement, as reaffirmed in the Letter Agreement of December 11, 1981, these claims will be sustained. B&B mechanics worked on these doors in the past and had a colorable claim to the work, which mandated the notice and discussion prior to subcontracting. Whether "specialized tools and equipment" were in fact necessary for these particular projects is a matter which Carrier could have and should have explored with the General Chairman in the good faith discussions required by Article IV and the December 11, 1981 Letter Agreement. The Organization was entitled to the requisite notice, the purpose of which is to "identify the work to be contracted and the reasons therefor." Nothing in this record justifies Carrier's failure to comply with the notice and discussion provisions. Third Division Awards 27614 and 26593 are ample precedent for sustaining these claims for monetary damages.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of July 1995.