

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31348
Docket No. MW-30956
96-3-92-3-826

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Terminal Railroad Association of St. Louis

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

- (1) The Carrier violated the Agreement when it assigned or otherwise allowed outside forces to replace switchties and crossties and perform miscellaneous track work at and around Madison Yards on the Illinois Transfer beginning July 10, 1991 and continuing (System File 1991-6/013-293-14).
- (2) The Agreement was further violated when the Carrier failed to conference with the General Chairman 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, Machine Operators R. Gray and D. Stogner, Truck Driver S. Gray and Track Laborers W. Edwards, R. White, E. Schuessler and J. Fenton shall each be allowed equal proportionate amounts of eight (8) hours' pay per day at their respective straight time rates and two (2) hours' pay per day at their respective time and one-half rates for each day the outside forces were allowed to perform tie removal and replacement work."

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.

On May 17, 1991, the Carrier notified the Organization that it intended to contract work out to the Burlington Northern and Norfolk Southern Railroads. In the notice Carrier stated that it did not have the necessary mechanized tie gang equipment with which to perform the job. In his May 20, 1991 letter of response, the General Chairman disputed the Carrier's subcontracting decision and requested a conference. In a letter dated June 4, 1991, the Carrier alleged that a discussion held between the Parties on May 27, 1991, constituted a conference regarding the contracting out, and stated its intention to proceed with the sub-contracting arrangements.

The General Chairman responded the following day with a letter in which he disputed the Carrier's characterization of the "chance meeting" on May 27, 1991, as a conference, and again requested a conference with the Carrier. In that same letter, the General Chairman pointed out that he would be unavailable to meet between June 17 and June 30, 1991. The conference was ultimately held on July 12, 1991, at which time the Carrier reiterated its lack of the proper mechanized tie gang equipment. In a follow-up letter to the General Chairman on July 19, 1991, the Carrier noted that no BMW employees were furloughed at the time, and that any overtime worked by the contractors would be offered to BMW employees.

By letter of August 31, 1991, the Organization filed a claim alleging violations of the Agreement, specifically Rule 2 (Classification) and Rule 3 (Seniority). The Organization also claimed that the Carrier had violated the provisions of Article IV of the National Agreement (Contracting Out), since it did not make a "good faith" effort to meet with the Organization prior to the contracting out in order to attempt to reach an understanding regarding the work in question.

In its response to that claim the Carrier rejected the Organization's position that Carrier had not made a "good faith" effort to confer with the General Chairman. It pointed out that the conference was delayed because of the Organization's unavailability, not through any reluctance on the part of the Carrier. The Carrier also reiterated that no employees were furloughed as a result of the contracting out and, in fact, two BMW employees assisted the sub-contractor hired by the Norfolk Southern Railroad to complete the work in question.

The obligation of the Carrier under Article IV of the National Agreement to confer prior to contracting out the work at issue is not disputed. In the case before this Board, each party blames the other for the delay in holding the required conference. While the Organization maintains that the Carrier merely "mentioned" the contracting out on May 27, 1991, the Carrier alleges that a Carrier officer was readily available even after normal work hours to discuss the matter, had the Organization a sincere interest in doing so. In light of the paucity of objective evidence on this record regarding the delay in the conference, the Board finds that the Organization has failed to shoulder its burden of persuasion to show that the Carrier acted in bad faith, or in a manner contrary to the provisions of Article IV of the National Agreement. Moreover, there is no evidence on this record to contradict the Carrier's position that it lacked the equipment necessary for performing the required work. (See, for example, Third Division Award 29858.

Carrier complied with the requirement that it give the Organization no less than 15 days notice "... prior to the date of the contracting transaction." The original notice to the Organization was dated May 17, 1991, and there is no evidence on this record to suggest that the contracting transaction occurred less than fifteen days after that date. It is unrefuted on the record that the work itself did not begin until July 10, 1991. While it may appear that by the time the July 12, 1991, conference took place the matter was moot, had the Parties agreed at that time to have the work performed only by Carrier employees, the subcontracting could have been halted. It is also unrefuted on this record that all BMW employees were fully employed during the time the subcontractor performed the work at issue and, further, that at least two BMW employees were working overtime with the subcontractor.

Based upon the foregoing, this Board finds no basis upon which to sustain the Organization's claim.

AWARD

Claim denied.

ORDER

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

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of January 1996.