

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31395
Docket No. MW-30686
96-3-92-3-472

The Third Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Soo Line Railroad Company (former Chicago,
(Milwaukee, St. Paul and Pacific Railroad
(Company)

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

- (1) The Agreement was violated when the Carrier assigned an outside concern (Railroad Specialist Systems) to perform handling and sorting of ties in the vicinity of West Salem, Wisconsin on April 29, 1991 and continuing (System File C-17-91-C080-07/8-00064 CMP).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman advance written notice of its intent to contract out said work as required by the Scope Rule.
- (3) The claim as presented by General Chairman M. S. Wimmer on June 11, 1991 to Division Manager D. J. Lyons shall be allowed because said claim was not disallowed by Division Manager D. J. Lyons in accordance with Rule 47 of the Agreement.
- (4) As a consequence of the violations in either Parts (1), (2) and/or (3) above, Maintenance of Way Roadway Equipment and Machine Sub-department employe L. Zwiefel shall be compensated for all time lost at his applicable machine operator rate 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 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 June 11, 1991, Organization's General Chairman, M. S. Wimmer, submitted a claim to Carrier's Division Manager, D. J. Lyons, " ... on behalf of employee Larry Zwiefel for 112 hours straight time at the applicable crane operator's rate of pay for lost work opportunities " because Carrier allegedly improperly subcontracted work to the Railroad Specialist Systems during the period of April 29, 1991 through May 17, 1991, in violation of Organization's Rule 1 Scope Rule.

The work in question consisted of " ... tie handling, sorting and piling within the Carrier's single tracking project on the Minneapolis, MN to Milwaukee, WI corridor " in the vicinity of West Salem, Wisconsin.

Organization mailed the aforesaid time claim to Carrier by means of Certified U. S. Mail on June 11, 1991, with a Return Receipt Requested card properly attached thereto. According to the Return Receipt, Carrier received said time claim on June 13, 1991.

On September 24, 1991, General Chairman Wimmer corresponded with Carrier's Vice President of Labor Relations, C. S. Frankenberg, requesting that the subject claim be paid as presented in accordance with the parties' Schedule Rule 47 because Carrier allegedly failed to deny said claim within the sixty (60) days time limit period as specified within the cited Rule.

In a letter dated November 25, 1991, Ms. Frankenberg responded to Mr. Wimmer's September 24, 1991, inquiry by alleging that Mr. Lyons denied the subject claim on August 7, 1991. A copy of said denial letter was attached to Ms. Frankenberg's November 25, 1991 letter to General Chairman Wimmer. Also attached to that same letter was a copy of a handwritten note from Personnel Steno Darlene M. Bruscato to Ms. Frankenberg in which Ms. Bruscato claims to have typed Mr. Lyons' August 7, 1991, denial letter to General Chairman Wimmer, and that said denial letter " ... was mailed via U. S. Mail promptly thereafter. Definitely prior to the 60 day time limits, with a few days to spare."

The matter was progressed by the parties throughout all of the remaining steps of the parties' negotiated grievance procedure. Thereafter, the matter remained unresolved, and it was appealed to the Third Division of the National Railroad Adjustment Board for final resolution.

Because of the similarity between the facts involved in the instant case and those which were involved in Third Division Award 31394, which was previously decided by this Third Division of the National Railroad Adjustment Board, we believe that the same rationale and outcome is to be applied in both cases, thus warranting the sustaining of the pending claim due to the fact that Carrier's handling of this matter was a violation of the time limits prescribed in the parties' Schedule Rule 47. We note, however, that the Statement of Claim in the instant case is somewhat ambiguous as to the exact number of hours claimed by Organization as having been worked by the outside contractor, Railroad Specialist Systems, on the claim dates. Be that as it may, the claim, nonetheless, as discussed by the parties on the property, clearly indicates that Organization claimed 112 hours of pay for Claimant as remedy for Carrier's alleged violation of Organization's Rule 1 Scope Rule. We will order, therefore, that Claimant be paid for 112 hours of pay at his normal hourly rate in effect at the time of the filing of the pending claim.

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 29th day of February 1996.