

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32096
Docket No. MW-31634
97-3-93-3-656**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Louisville
(and Nashville Railroad)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces to operate a Pandrol Switch Grinder in the Nashville Terminal on August 24 through October 2, 1992 rather than assigning furloughed Grinder Operators J. E. Jennings and E. M. Cole [System File 13(119) (92)/12(93-18) LNR].**
- (2) The Agreement was also violated when the Carrier assigned Welder J. D. Wheeler to flag for the contractor's forces on September 22 through October 2, 1992 rather than assigning Flagman R. D. Flatt.**
- (3) The Carrier further violated the Agreement when it failed to give the General Chairman advance written notice as required by the May 17, 1968 National Agreement and failed to exercise good faith when it failed to meet with the General Chairman and attempt to rent or lease the equipment required in accordance with the December 11, 1981 Agreement.**
- (4) As a consequence of violations referred to in Parts (1) and/or (3) above, Claimants J. E. Jennings and E. M. Cole shall be compensated for the number of hours and pay as claimed within our initial letter of claim*.**

- (5) As a consequence of the violation referred to in Part (2) above, Claimant R. D. Flatt shall be compensated for the number of hours and pay as claimed within our initial letter of claim*."

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 were given due notice of hearing thereon.

On October 11, 1992, the Organization filed a claim alleging that the Carrier violated the Agreement when it hired an outside contractor to operate a Pandrol Switch Grinder on August 24, 25, 26, September 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, October 1 and 2, 1992. The Organization argued that the Carrier failed to notify the General Chairman of its intent to hire a subcontractor and failed to comply with the provisions of the December 11, 1981 Letter of Agreement regarding the rental or leasing of equipment to be operated by its Maintenance of Way employees. Furthermore, the Organization alleges that the Carrier violated the Letter of Agreement of April 29, 1987 when it assigned Welder J. D. Wheeler to flag for the contractor on September 22, 23, 24, 25, 28, 29, 30, October 1 and 2, 1992 rather than upgrading and assigning Claimant Flatt. The Organization contends that the Claimants were fully qualified, willing, and available to perform the work in question.

The Carrier denied the claim contending that the Claimants were not qualified and have never performed this work in the past. The Carrier alleges that it did notify the Organization of its intent to subcontract. As to Claimant Wheeler, the Carrier points out that he was working with his Helper and received track time as his duties required and was not flagging.

The Board reviewed the record and finds that the file contains no evidence that the Carrier notified the General Chairman in accordance with Article IV prior to assigning the outside contractor to perform the work. Article IV states in part:

“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.”

In this case, there is absolutely no evidence that the Carrier notified the General Chairman when it decided that it wanted to contract out the work at issue here.

The Carrier presented a great deal of evidence that it often contracted out the work involved here. However, that is not the issue. Article IV was agreed upon by the parties for the purpose of allowing the Organization to at least meet with the Carrier prior to any subcontracting and thereby be afforded an opportunity to make its case as to why the Organization believes that the work should be performed in-house. The Carrier still has a right to make a determination after that meeting that the work should be subcontracted. However, the Carrier cannot rightfully make that determination until it has given the required notice to the Organization and thereby given the Organization the opportunity to meet and discuss the matters relating to the contracting transaction.

In this case, the record contains no evidence that the Carrier made any effort to notify the Organization and afford it an opportunity to meet prior to subcontracting the work. Because that notice was not served on the Organization, the Board finds that the claim must be sustained. See Third Division Awards 30899, 30977, and 31479.

AWARD

Claim sustained.

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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 9th day of July 1997.