

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32446
Docket No. MW-31682
98-3-93-3-711**

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(CSX Transportation, Inc. (former Louisville and
(Nashville 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 (Park Paint Dist.) to paint fuel storage tanks at Osborn Yard, Louisville, Kentucky beginning August 17 through October 12, 1992 [System File 12(49) (92)/12(93-3) LNR].**
- (2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it failed to give the General Chairman advance written notice of its intention to contract out said work.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, B&B employees G. R. Madden, Jr., B. Short, R. Brown and S. G. Shackelford shall each be allowed eight (8) hours' pay at their respective rates of pay beginning August 17 through October 12, 1992.”**

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.

Under date of August 16, 1992, the Carrier sent notice to the General Chairman in pertinent part as follows:

"This will serve as notice of Carrier's intent to contract for the painting of {four} bulk and miscellaneous storage tanks. . . .

It is necessary to contract the above referenced work due to the fact that the Carrier does not have adequate equipment laid up or forces laid off, sufficient both in number and skill with which the work might be done."

The Organization states this letter was received on August 21. The contracted work in question commenced on August 17.

The record shows indisputably that the Carrier failed to give the required 15-day notice to the General Chairman, thus precluding any possibility that a conference may have given the opportunity to the Organization to suggest how the work could be done by Carrier forces, or for the Carrier to explain why such was not feasible.

The notice being deficient, the claim must be sustained. The Claimants were actively at work during the stated period. In some instances, this might not require a monetary remedy. Here, however, the Board finds that the requested remedy is appropriate.

During the claim handling process, there was an allegation that painting work was also undertaken for other than the storage tanks. This is disputed by the Carrier and is clearly not included in the Statement of Claim. As a result, the Award is limited to the storage tank painting.

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 21st day of January 1998.