

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32861
Docket No. MW-31793
98-3-94-3-44**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(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 outside forces (Knox Kershaw Inc.) to perform Maintenance of Way and Structures department work, i.e., remove rotten grain, wood, mud, fertilizer, paper and various other debris and refuse from the roundhouse and hump yard tracks at the St. Paul Yard during the period of July 24 through August 12, 1992 (System File C-34-92-C080-07/8-00105 CMP).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intention to contract out said work as required by the Scope Rule.**
- (3) The claim as presented by Assistant General Chairman T. A. Barrette on September 18, 1992 shall be allowed as presented because the claim was not disallowed by Division Manager D. J. Hansen in accordance with Rule 47, 1(a).**
- (4) As a consequence of the violations referred to in Parts (1), (2) and/or (3) above, Maintenance of Way and Structures Department employes S. D. Henrichs and T. L. Sigler shall be compensated for all wage loss suffered as a result of the outside forces performing the work in question.**

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.

Without prior written notice to the Organization, during certain dates in 1992, the Carrier utilized a contractor to remove rotten grain, wood, mud, fertilizer, paper and various other debris and refuse from the Carrier's roundhouse and hump yard tracks at St. Paul Yard.

The Scope Rule states, in part:

"NOTE: In the event Carrier plans to contract out work within the scope of this agreement, the Carrier shall notify the General Chairman 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."

Because no notice was given, the Organization has demonstrated a violation of that portion of the Rule. See Third Division Awards 31388, 31386 between the parties.

Contrary to the Carrier's argument, in order to be entitled to notice as required by the Rule the Organization does not have to demonstrate that the covered employees performed the work on an exclusive basis. See Award 31388 (" . . . [T]he Board has repeatedly held that demonstration of 'exclusivity' is not required by the Organization in its claim for specific work.") See also, Award 31386 ("A myriad of Awards have concluded that, while exclusivity may be an appropriate test as to division of work among various crafts and classes of the Carrier's employees, it is not an appropriate requirement under the Agreement provision concerning contracting of work"). The

record demonstrates that in the past covered employees have performed this type of work. That is sufficient for us to conclude that the work falls “within the scope of this agreement” requiring the Carrier to give the Organization advance written notice as stated in the Rule. Compare Third Division Award 31525 (which did not address the notice question) where the record did not contain such a demonstration.

As a remedy, relief to employees even though working is appropriate. See Award 31386:

“... Here, the work was lost to Carrier employees, and a claim for pay is not inappropriate. This is particularly relevant here in view of the Carrier’s admitted failure to advise the General Chairman in advance. If such had been done, it is certainly conceivable that either a solution to use Carrier employees may have been devised or the Organization may have been convinced of the necessity of contracting the work.”

The failure by the Carrier to give advance notice as required by the Rule resulted in a loss of work opportunities. That loss shall be made whole.

We have considered Third Division Award 30115 on this property decided before Awards 31388 and 31386. We are not persuaded by the rationale in Award 30115 and believe the later decided Awards 31388 and 31386 correctly resolve this dispute.

This claim will be sustained. The matter is remanded to the parties to determine the number of hours worked by the contractor. Claimants shall be compensated accordingly.

The Organization’s other arguments are moot.

AWARD

Claim sustained in accordance with the Findings.

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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 21st day of October 1998.