

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32863
Docket No. MW-31806
98-3-94-3-88

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 (L. H. Hinnen & Sons) to perform Maintenance of Way Roadway Equipment and Machine Subdepartment work (demolish a storage shed and hauling debris away) at Chillicothe beginning October 19 through 29, 1992 (System File C-44-92-C080-11/8-00116 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) As a consequence of the violations referred to in Parts (1) and/or (2) above, Mr. D. J. Beranek shall be allowed seventy-two (72) hours' pay at his respective straight time rate and eighteen (18) hours' pay at his time and one-half rate.”

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 demolish a storage shed.

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.

The Organization is not required to demonstrate that the employees performed the work on an exclusive basis. See Third Division Award 32861 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’).”

Aside from the evidence offered by the Organization, the record demonstrates that the Carrier conceded on the property that the employees have performed this type of work in the past. In the Carrier's May 14, 1993 letter at page five, the Carrier states "... Carrier agrees, the Organization's members may have performed similar work in the past. ..." Those demonstrations are 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.

We do not view the work involved in this case (demolition of a shed) to be work on abandoned property so as to remove that work from coverage of the Scope Rule so as to change the result.

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 requiring relief even though Claimant may have been working at the time the contractor was used. Award 32861. See also, Third Division 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."

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

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.