

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32940
Docket No. MW-32167
98-3-94-3-592**

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

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(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 to tear out old plumbing on May 10 and 11, 1993 and to install new ceilings, walls, doors, windows and paint on May 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27 and 28, 1993 at the North Switchman’s Building at Montgomery Yard, Montgomery Alabama [System File 17 (15) (93)/12(93-0967) LNR].**
- (2) The Agreement was further violated when the Carrier failed to notify the General Chairman of its intent to contract out said work in accordance with Article IV of the May 17, 1968 National Agreement.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Pump Repairman J. D. McInvale shall be allowed sixteen (16) hours’ pay at his straight time rate and B&B employes H. W. Wright, C. A. Wiggins and C. A. Watson shall each be allowed one hundred twenty (120) hours’ pay at their respective straight time rates.”**

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.

This dispute involves Carrier's action in contracting remodeling work. The original claim, filed on July 7, 1993, alleges that no advance written notice was given to the Organization of the intent to contract this work which Claimants had performed in the past. Carrier's September 3, 1993 response notes that Claimants were fully employed, asserts that it gave written notice on April 23, 1993 and references a file number where that notice is contained, with no objection having been raised by the Organization. The Organization's appeal dated September 21, 1993 again states that Carrier failed to give proper notice. The exchange of correspondence continued on the property in November 1993 when a new General Chairman became involved. The matter was conferenced in February 1994 which was confirmed by letter dated April 13, 1994.

By letter dated May 23, 1994, Carrier again clarified its position that the work in issue was covered by a contracting notice that had previously been referred to but not made part of the record. Carrier attached a copy of the April 23, 1993 notice to that correspondence. The notice purportedly covers the work in issue and states the reason for contracting as lack of adequate equipment and staff to perform the work. The parties agreed on August 30, 1994 to extend the time limits for submitting this claim to the Board until November 30, 1994. This matter was ultimately forwarded to the Board on November 29, 1994.

The Organization argues that this is scope-covered work and that it was entitled to advance written notice of contracting pursuant to Article IV of the May 17, 1968 National Agreement. It relies upon the following on-property Awards to support its contention that the failure to provide such notice warrants an award of damages: Third Division Awards 30977, 31479, 31597, 31619, 31777, 32096, 32160, 32312 and 32446.

Carrier contends that the Organization failed to sustain its burden of proving a violation, citing Third Division Awards 20573, 30224 and 30716. It argues that the Board cannot resolve conflicting facts and should dismiss the claim because there is a conflict concerning Carrier's notification. Third Division Awards 20408, 27853, 27857, 28790 and 28794. Carrier also asserts that Claimants suffered no loss of earnings as a result of this contracting, and, therefore, no monetary remedy is appropriate.

A careful review of the record convinces the Board that notice was required in this case, and the outcome of this claim must turn on whether Carrier gave such notice. While there is no doubt that Carrier merely identified the date and location of the notice it contended covered this work early in the claim processing and prior to the conference without attaching a copy of it to its correspondence, the record reveals that a copy of such notice was included with its final clarification letter in May 1994, some six months prior to the filing of this claim with the Board. Thereafter, the Organization did not contest its existence, accuracy or application to the work in issue on the property, albeit, still arguing that Carrier failed to serve proper notice in its Submission to the Board.

On the basis of this record, we conclude that Carrier satisfied its Article IV obligation to notify the Organization of its intent to contract out the work in dispute, and that the Organization failed to prove any other basis for finding a violation of the Agreement.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of November 1998.