

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35571
Docket No. MW-33435
01-3-96-3-963**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Soo Line 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 (Hjelle Roofing) to perform Maintenance of Way work (roof repairs) on the roundhouse at Thief River Falls, Minnesota on September 20, 22, 23, 24, 26 and 27, 1995 (System File Rl. 049/8-00248).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intent to contract out the work described in Part (1) above.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Messrs. K. K. Walberg, J. Samson, T. A. Myers and M. A. Abercrombie shall each be allowed sixty-four (64) hours' pay at their respective straight time rates and eight (8) hours, pay at their respective time and one-half 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.

The facts in this case are undisputed. Without any advance notice to the General Chairman, the Carrier contracted for and utilized the services of an outside contractor, Hjelle Roofing, to perform roof repairs on the Roundhouse at Thief River Falls, Minnesota. As in past cases, once again, the Carrier tries to defend its utter failure/refusal to provide the advance written notice required by Appendix O of the controlling Agreement by trotting out the shopworn contention that such notice and opportunity for consultation are required only if the work contracted out is "exclusively" reserved for performance by the Organization. For reasons fully explained in a series of Awards between these same parties dating back to at least 1993 on this same issue, the Board once again roundly rejects that thoroughly discredited and erroneous contention. See Third Division Awards 29457, 31386, 31388, 32704, 32777, 32861, and 32863. The Carrier has chosen at its peril to ignore the Board's admonition in Third Division Award 29547 and the subsequent line of decisions that good faith notice is mandated irrespective of "exclusivity." Particularly because of the persistent and apparently wilful nature of the Carrier's recidivist violation of the notice requirements of Appendix O, we reject the "fully employed" defense and find the claim for monetary damages persuasive and appropriate in order to protect the integrity of the Agreement. See Third Division Awards 29912, 31594, 31599, 31652, 31658, 31752, 31755, 31798, 32160 and 32327.

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 24th day of July, 2001.