

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37720
Docket No. MW-36667
06-3-01-3-162

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Southern
(Pacific Transportation Company [Western Lines])

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Advanced Technology Cleaning, Inc.) to perform Water Service Sub-department work (install track matting) between the diesel ramp and the service track in Roseville Yard at Roseville, California beginning December 6 through 17, 1999, instead of Water Service Sub-department employees K. A. Yoder, J. C. Karl and J. R. Rhea (Carrier's File 1224996 SPW).
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with a proper advance written notice of its intent to contract out the work referenced in Part (1) above or make a good-faith effort to reduce the incidence of subcontracting and increase the use of Maintenance of Way forces, in accordance with Article IV of the May 17, 1968 National Agreement and the December 11, 1981 Letter of Understanding.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants K. A. Yoder, J. C. Karl and J. R. Rhea shall now each be "... paid their proportionate share of the ninety-six (96) man hours worked by the herein named OUTSIDE CONTRACTOR. Payment shall be at their respective rate of pay."

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 Claimants established seniority in the Maintenance of Way and Structures Department, Water Service Subdepartment on the Sacramento-West Division. At the time of the instant dispute, they were regularly assigned to a water service crew headquartered at Roseville, California.

Beginning December 6 through 17, 1999, the Carrier assigned Advanced Technology Cleaning, Inc., to install track matting between the diesel ramp and the service track in the Roseville Yard. Four employees of the outside contractor expended a total of 96 hours unrolling approximately 3000 feet of track matting and positioning it between the diesel ramp and the service track.

On February 4, 2000, the Organization filed the initial claim alleging that the contractor's installation of the matting constituted a violation of Article IV of the 1968 National Agreement. The claim also alleged that the Organization's members had historically performed said work.

According to the Organization, the Carrier's Maintenance of Way employees were fully qualified and capable of performing the designated work. Said work falls within the jurisdiction of the Organization and, therefore, the Claimants should have been assigned. In addition, before contracting out, it was the Carrier's responsibility to provide proper advance notice. Therefore, the Organization argues that the Claimants should be compensated for the lost work opportunity.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. It contends that the work was beyond the capabilities of

the Carrier's forces. In addition, the Carrier contends that it has the right to contract out such work, based on longstanding arbitral precedent. Further, the Carrier contends that because there is a history of a mixed practice of using contractors and BMW-represented employees to perform the relevant work, it is allowed to contract out said work.

The Board finds that the Carrier did not provide the required advance notice of the proposed contracting to the General Chairman. Such a requirement must have been fulfilled by the Carrier in order to sustain its position. As the Board held in Third Division Award 36516:

" . . . If the Organization has established that BMW-represented employees have, at times, performed the disputed work, then advance notice is required even if Organization forces have not performed the work to the exclusion of other crafts or contractors."

In the instant case, there is no question that the Carrier did not provide the advance notice required. The work in question was arguably scope-covered and at a minimum, notice should have been provided to the Organization before contracting out by the Carrier. Thus, the claim will be sustained.

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 23rd day of February 2006.