Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 40968
Docket No. MW-39447
11-3-NRAB-00003-060111

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

(Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned outside forces to perform Maintenance of Way work (replace rail and related work) on South Running Track and Rockwell Track No. 1 beginning on November 2, 2004 and continuing through November 17, 2004 (System File BRC-6873T).

(2) The Agreement was further violated when the Carrier failed to provide the General Chairman a proper advance notice of its intention to contract out the aforesaid work or make a good-faith effort to reach an understanding in accordance with Rule 4 and the November 15, 2002, as amended June 15, 2004, Agreement.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, '. . . each member of the Brotherhood of Maintenance of Way Employes employed on the BRC be compensated, an equal and proportionate share, of the eight hundred fifty one (851) hours worked by the contractors.'"

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.

It is undisputed that the Carrier contracted for rail replacement work on its South Running Track as alleged in the Statement of Claim without having reached an understanding with the General Chairman to do so. Some background is appropriate to lay the basis of the claim.

By Agreement signed November 15, 2002, the parties agreed that certain specified work would be performed by outside contractors over a three-year period comprised of calendar years 2002–2004. In exchange, the Organization obtained several-year full employment guarantees, as well as lump sum cash payments for each of its members. The specified work for 2004 was limited to structural steel and concrete repairs on up to 15 bridges, as well as asphalt replacement on up to 10 road crossings. The 2002 Agreement required a further letter of understanding detailing the performance of any other work outside of the bridge and crossing repair work.

Despite the explicit limitations of the 2002 Agreement, the Carrier issued a notice dated January 19, 2004, that announced its plan to have contractors perform ten types of work. None of the ten matched the two kinds of work specified in the 2002 Agreement. The notice sparked discussions between the parties that culminated in an amendment of the 2002 Agreement that was dated June 15, 2004.

The amendment is in the form of a letter authored by a Carrier official. The Carrier, therefore, chose the descriptive language of the amendment. The letter defined only two projects both of which involved the relaying of rail at two different locations. It is the second of the two defined projects that led to the instant claim. This second project was to recover 115 lb. continuous welded rail (CWR) from the first project and install it ". . . into the East Classification Yard at Clearing Yard. . . ."

It is clear from the record that the Carrier used a contractor to perform a different project at a different location. The South Running Track is not ". . . within the East Classification Yard. . . ." Moreover, it is unrefuted in the record that 136 lb. CWR was installed.

When the Organization filed its claim, it provided a tabular listing showing the number of contractor employees used each day, the hours worked each day, and the resulting total man-hours per day. The aggregate total was 851 hours. This figure was never refuted in the record by the Carrier. Although the Carrier asserted that the Organization's claim improperly included an unspecified number of hours of on-duty employees, that assertion is not supported by the record. The tabular listing provided in the original claim, which was repeated exactly in the Organization's initial appeal, clearly lists the hours stated to be hours worked by the contractor's forces.

Given the foregoing factors, we are compelled to find that the Carrier did violate the effective Agreement when it contracted the work as it did. Because the number of hours claimed was never effectively refuted during the development of the record by the parties on the property, the 851 hours claimed must stand as proven fact. Therefore, the claim must be sustained as presented.

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 14th day of April 2011.