Award No. 18305
Docket No. MW-18636

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when, without prior notice to General Chairman M. R. Martin as required by Article IV of the May 17, 1968 National Agreement, it contracted out the work of dismantling and removing Warehouse 3, Seattle, Washington. (System File D-1635/19-29).

(2) Carpenter J. O. Gutierrez be allowed eighty (80) hours' pay; Carpenter T. H. Skaar be allowed one hundred four (104) hours' pay; and Foreman G. R. Webber and Carpenters M. E. Dearing and W. C. Grisson each be allowed one hundred eighty-four (184) hours' pay at their respective straight-time rates because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The claimants hold seniority in their respective ranks within the Bridge and Building Sub-department on the Coast Division.

During January, 1968, the Carrier dismantled and removed a fifty (50) foot by one hundred (100) foot section of Warehouse No. 3 at Seattle, Washington. In recognition of their contractual right to such work, a B&B crew, supervised by Foreman H. Reay, was assigned to and performed the work, using tools and equipment owned and furnished by the Carrier. Evidence to this effect was presented to the Carrier's highest appellate officer during the handling on the property by a letter reading:

"October 6, 1969

Mr. L. W. Harrington, Vice President
Labor Relations, C.M.St.P.&P. R.R.
374 Union Station
Chicago, Illinois 60606

these hours consumed, 478 are credited to man-hours utilized by operators of the equipment used in the instant case while the balance thereof (105 hours) were utilized in laborer's time.

During the period contractor's forces were engaged in the performance of the work here involved, the claimants filed with the Carrier Officer who is authorized to receive claims in the first instance, time claims for payment of eight hours' pay for each work day during the period shown below:

G. R. Webber	8/19 — 9/19 or 23 days
M. E. Dearing	8/19 — 9/19 or 23 days
W. C. Grisson	8/19 — 9/19 or 23 days
J. O. Gutierrez	8/19 — 8/30 or 10 days
T. H. Skaar	9/ 3 — 9/19 or 13 days

The claims as shown above were based on an alleged violation of Article IV of the May 17, 1968 National Agreement.

The work with which we are here concerned is not within the scope and application of the Maintenance of Way Agreement either by schedule rules or past practice nor is it work that can be claimed under other agreements i.e., the May 17, 1968 Agreement, therefore, there occurred no violation of the Maintenance of Way Agreement or any other agreements when the work here involved was contracted.

All of the claimants were fully employed and under pay beginning August 19, 1968, therefore, there were no lost earnings on their part.

Attached hereto as Carrier's Exhibits are copies of the following letters:

Letter written by Mr. L. W. Harrington, Vice President-Labor Relations, to Mr. Max R. Martin, General Chairman, under date of January 31, 1969 ..... Carrier's Exhibit "A"

Letter written by Mr. L. W. Harrington to Mr. Max R. Martin under date of April 2, 1969 ..... Carrier's Exhibit "B"

Letter written by Mr. L. W. Harrington to Mr. Max R. Martin under date of June 17, 1967 ..... Carrier's Exhibit "C"

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization is contending that Carrier violated the Agreement, in particular Article IV of the May 17, 1968 National Agreement by failing to give notice as provided therein to the General Chairman before contracting out the work in dispute.

Article IV — Contracting Out, provides as follows:

"In the event a carrier plans to contract out work within the scope of the applicable schedule agreement, the carrier shall notify the General Chairman of the organization involved 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.

"If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the carrier shall promptly meet with him for that purpose. Said carrier and organization representatives shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached the carrier may nevertheless proceed with said contracting, and the organization may file and progress claims in connection therewith.

"Nothing in this Article IV shall affect the existing rights of either party in connection with contracting out. Its purpose is to require the carrier to give advance notice and, if requested, to meet with the General Chairman or his representative to discuss and if possible reach an understanding in connection therewith.

"Existing rules with respect to contracting out on individual properties may be retained in their entirety in lieu of this rule by an organization giving written notice to the carrier involved at any time within 90 days after the date of this agreement."

The Organization's position is the work here in question is work included in the scope of the Agreement under Rule 46(d) thereof; that the provisions of Article IV of the May 17, 1968 Agreement are mandatory in requiring Carrier to give notice to the General Chairman before contracting out work; that no notice was given herein by Carrier before the work in question was contracted out; that if the parties had intended to restrict the application thereof to work within the scope of the Agreement which is exclusively reserved to and has been exclusively performed by Maintenance of Way Employes, they would have so provided therein; that Claimants were available to perform the dismantling work here in dispute; that Carrier's assignment of outside forces to perform work to which Claimants herein were contractually entitled, resulted in a definite loss of work opportunity and related monetary benefits.

Carrier's defense herein is that Article IV of the May 17, 1968 Agreement is not applicable herein on the basis that the work in question is not work within the scope of the applicable Agreement in that by tradition, practice and custom on this property the work involved herein is not reserved to employes within the scope and application of said maintenance of way Agreement; that the Claimants were not qualified to operate any of the equipment of the contractor used in the performance of the work and thus that portion of the man-hours consumed by contractors' force in operation of said equipment, 478 hours, cannot be claimed by the Claimants; that all of the Claimants involved in this dispute did not lose any earnings and thus this Board is not empowered to impose a penalty by awarding punitive damages.

While it is true that the scope rule of the Agreement is general in nature and that therefore work can be contracted out unless reserved exclusively by custom, tradition and practice to Maintenance of Way Employes, and finding that said work in dispute herein is not reserved "exclusively" to Maintenance of Way Employes and can be contracted out by Carrier as was done in this instance, nevertheless, we are here solely concerned with the application of Article IV of the May 17, 1968 Agreement.

The first paragraph of said Article IV deals with the contracting out of work "within the scope of the applicable schedule agreement". It does not say the contracting out of work reserved exclusively to a craft by history, custom and tradition. This Board is not empowered to add to, subtract from, or alter an existing agreement. We therefore conclude that inasmuch as Maintenance of Way Employes have in the past performed such work as is in dispute here, then said work being within the scope of the applicable Agreement before us, Carrier violated the terms thereof by failing to notify the General Chairman within 15 days prior to the contracting out of said work. In reaching this conclusion, we are not asserting that the work here in question cannot be contracted out later after the giving of the required notice. We are only saying that since the work in question came within the scope of the Maintenance of Way Agreement, Carrier was obligated to give said advance notice. Failing to do so, Carrier violated the terms of Article IV of the May 17, 1968 National Agreement governing the parties to this dispute.

In regard to damages, we adhere to the principle that damages shall be limited to Claimants' actual monetary loss arising out of the Agreement violation and that this Board is not authorized to use sanctions or assess penalties unless provided for in the controlling Agreement. Since Claimants suffered no pecuniary loss in this instance, we will deny paragraph 2 of the Statement of Claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated in accordance with Opinion.

AWARD

Paragraph 1 of the Statement of Claim is sustained.

Paragraph 2 of the Statement of Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of November 1970.

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