

Award No. 18714
Docket No. MW-19088

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN PACIFIC TRANSPORTATION COMPANY
(Pacific Lines)

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 C. L. Ashley as required by Article IV of the May 17, 1968 National Agreement, it assigned the work of installing and repairing right-of-way fence from M.P. 1210 to M.P. 1216 on the Eastern District of the Tucson Division to outside forces. (System File MofW-152-699.)

(2) B&B Foreman J. R. Musgrove, Lead Carpenter L. E. Poole, and Carpenters M. E. Parra, E. I. Snelling, L. Graves and E. A. Marquez each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man hours expended by outside forces in performing the work referred to in Part (1) of this claim.

(3) The Carrier shall also pay the claimants six percent (6%) interest per annum on the monetary allowances accruing from the initial claim date until paid.

EMPLOYES' STATEMENT OF FACTS: On or about May 19, 1969, the Carrier entered into a contract with an outside individual (Mr. L. S. Jackson) to perform the work of installing and repairing right-of-way fence from M.P. 1210 to M.P. 1216 on the Eastern District of the Tucson Division. Such work comes within the scope of the schedule agreement under the provisions of Rule 1 which, insofar as it is pertinent hereto, reads:

"These rules govern rates of pay, hours of service, and working conditions of employees in all sub-departments of the Maintenance of Way and Structures Department (not including supervisory employees above the rank of foreman) represented by the Brotherhood of Maintenance of Way Employees, such as:

(a) Foremen and assistant foremen of bridges, buildings, tunnel, painter, construction, concrete, mason, water supply,

Department, represented by the Petitioner, bearing effective date of July 1, 1964 (hereinafter referred to as the Current Agreement), a copy of which is on file with the Board and is hereby made a part of this submission.

2. On Carrier's Eastern District of the Tucson-Rio Grande Division, immediate repairs were required to right-of-way fences east of Deming, New Mexico, between location of Milepost 1210 to Milepost 1216 to prevent cattle of adjoining ranchers from straying onto Carrier's trackage. One of the ranchers, Mr. Laurence S. Jackson, offered to furnish his own labor to make the repairs to the fences for consideration of \$650.00, providing Carrier furnished material for such fence repairs. Carrier accepted Mr. Jackson's offer; fence repair work commenced on or about May 1, 1969, and was completed on or before May 20, 1969.

3. By letter dated June 8, 1969 (Carrier's Exhibit "A"), Petitioner's District Chairman submitted claim to Carrier's Division Superintendent in behalf of six employees of the Bridge and Building Sub-department; namely, B&B Foreman J. R. Musgrove, Lead Carpenter L. E. Poole, Carpenters M. E. Parra, E. J. Snelling, Leon Graves and E. A. Marquez (hereinafter referred to collectively as claimants), assigned to B&B Gang No. 3 at Lordsburg, New Mexico, for alleged violation of the Current Agreement when on or about May 19, 1969, Carrier deprived claimants of their alleged right to perform the work on these fences without notifying the General Chairman in writing in advance.

By letter dated June 12, 1969 (Carrier's Exhibit "B"), Carrier's Division Superintendent denied the claim. By letter dated June 15, 1969 (Carrier's Exhibit "C"), Petitioner's District Chairman gave notice that the claim would be appealed.

By letter dated June 30, 1969 (Carrier's Exhibit "D"), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel and by letter dated November 24, 1969 (Carrier's Exhibit "E"), the latter denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The Petitioner contends that the Carrier violated the agreement when without prior notice to the General Chairman, as required by Article IV of the May 17, 1968, National Agreement, it contracted the work of installing and repairing right-of-way fence on the Eastern District of the Tucson Division.

The Carrier contends that the work involved is not reserved exclusively to Maintenance of Way employees; that the contracting in this instance was in accordance with a long established practice, and in accordance with prior awards of the Division involving the same parties. In the handling on the property the Carrier also contended that there were no B&B forces available to do the work at the time required as they were employed on other work during this time and that no time was lost by any of the Claimants. The Carrier, in the handling on the property also called attention to that part of Article IV of the May 17, 1968, Agreement reading:

"Nothing in this Article IV shall effect the existing rights of either party in connection with contracting out."

With respect to the contentions of the Carrier that the work is not reserved exclusively to Maintenance of Way employees, we adopt the following from Award 18305 (Dugan), which was affirmed in Award 18687 (Rimer):

"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 Employees 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."

For the limited purpose of providing notice to the General Chairman, we find that the Carrier violated Article IV of the National Agreement of May 17, 1968. However, as it is not shown that the Claimants suffered any pecuniary loss, the facts in the case justify our following Awards 18305 and 18687, in denying Parts (2) and (3) of the 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 Employees involved in this dispute are respectively Carrier and Employees 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 as set forth in the Opinion.

AWARD

Part (1) of claim is sustained.

Part (2) and (3) of claim are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1971.

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