



Award No. 18968

Docket No. MW-19107

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Clement P. Cull, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CHICAGO & EASTERN ILLINOIS 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 the General Chairman as required by Article IV of the National Agreement dated May 17, 1968, it assigned track sub-department work at Yard Center to outside forces. (System File MW-6902).

(2) Messrs. J. Copher, H. J. McConnel, W. E. Grass, E. J. Sterchi, C. J. Hall, P. F. Rumble, C. W. West, R. L. Johnson and E. White each be allowed pay at the Bulldozer and Euclid Operator's straight-time rate for an equal proportionate share of the total number of man hours expended by outside forces in the performance of the work referred to within 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.

EMPLOYEES' STATEMENT OF FACTS: The claimants all hold seniority as Bulldozer and Euclid Operators.

A short time prior to June 19, 1969, the Carrier assigned the work of hauling material, equipment, etc., required by its track forces who were engaged in building tracks in Yard Center, to outside forces. The outside forces performed this work with a bulldozer equipped with a bucket attachment which was used for hauling fill material, angle bars, track bolts and track spikes, tie plates, etc., and a fork lift attachment for hauling ties, rails, etc. The Carrier did not advise the General Chairman of its desire to assign this work to outside forces as it is required to do under the provisions of Article IV of the National Agreement dated May 17, 1968, which reads:

"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.

appealed the claim to the Director of Personnel in letter dated October 1, 1969, copy of which is attached hereto as Carrier Exhibit "C." In his letter of appeal the General Chairman refers to statements of the District Engineer (1) that the claim is vague and ambiguous because it does not identify the time and date of the alleged violation, and (2) that it does not adequately describe the work made a subject of claim. The General Chairman dismisses as ridiculous the contention the claim is vague and ambiguous because it does not identify time and date of the alleged violation, and rejects the point the claim does not adequately describe the work made a subject of claim by asserting it is incumbent upon the District Engineer and his assistants to identify the work which is being allegedly improperly performed.

The claim was declined by the highest officer designated by management in letter dated November 28, 1969, copy of which is attached hereto as Carrier Exhibit "D."

There is in effect between the parties hereto an agreement, identified as Schedule No. 3, effective May 15, 1953.

(Exhibits not reproduced.)

OPINION OF BOARD: The record clearly shows that Carrier used outside forces in hauling material and equipment at Yard Center. The record further reveals that such work is within the Scope of the Organization's agreement. It is uncontested that the Carrier did not notify the Organization of its plans to use outside forces pursuant to Article IV of the May 17, 1968 National Agreement.

Carrier defends by alleging that the claim was "vague and ambiguous." The General Chairman in his letter of June 19, 1969 to the District Engineer stated the claim to be:

"Attention is invited to the fact that the Carrier is presently using outside forces to perform track sub-department work at Yard Center. Specifically, a contractor's bulldozer and operator are being used to assist the track gangs at Yard Center in hauling material, equipment, etc."

We disagree with Carrier. The foregoing statement sufficiently identifies the work being done and when it was being done to enable the Carrier to form a reply.

Thus as Carrier did not notify the Organization as to its plans to sub-contract work within the scope of the agreement as it was required to do under Article IV it violated the agreement. See Award 18305 and others of this Division.

As to Claims (2) and (3) they will be denied for the reasons set out in Award 18967.

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 vioalted.

AWARD

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January 1972.