

Award No. 19191

Docket No. MW-19217

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, MILWAUKEE, ST. PAUL AND
PACIFIC RAILROAD CO.**

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 May 17, 1968 National Agreement, it assigned the work of delivering ice in the Milwaukee Terminals to outside forces (System File 46/D-1674).

(2) Truck Drivers O. Gaedtke and D. Jensen each be allowed pay at their straight time rates for an equal proportionate share of the total number of man hours expended by outside forces since August 11, 1969 in performing the work described in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimants are regularly assigned track department truck drivers. In addition to performing truck driving work in connection with track construction, maintenance and repair work, they have traditionally been assigned to perform the work of delivering ice to various locations within the Milwaukee Terminals. Evidence to this effect was presented to the Carrier's Superintendent with a letter reading:

"October 27, 1969

Mr. N. H. McKegney, Superintendent
433 West St. Paul Avenue
Milwaukee, Wisconsin 53200

Dear Sir:

The attached claim has been declined by Roadmaster P. J. Sylvester and such is now proposed to you on appeal of his decision.

The attached statement signed by truck driver in Milwaukee Terminal verifies our position that the handling of ice has been the work of Track Department truck drivers for the past 15 to 20 years and as such this work has been customarily performed by carrier employees of this department.

The two claimants in the instant case were fully employed and under pay beginning August 11, 1969, therefore, there was no lost earnings on their part.

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

Letter written by Mr. L. W. Harrington, Vice President-Labor Relations, to Mr. Max R. Martin, General Chairman, under date of January 15, 1970.Carrier's Exhibit "A"

Letter written by Mr. L. W. Harrington to Mr. Max R. Martin under date of June 26, 1970.Carrier's Exhibit "B"

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization contends that the Carrier violated Article IV of the May 17, 1968, National Agreement when it failed to notify the General Chairman of its plans to contract out the work of driving the truck used in the hauling and delivery of ice in the Milwaukee Terminals.

The Carrier maintains that there was no contracting out of work; that no notice was required since the work is not reserved exclusively to Maintenance of Way employees; that Claimants suffered no pecuniary loss, thus precluding an award of damages; and that this Board is without jurisdiction to enforce said Article IV.

These contentions have been raised numerous times before in cases involving these same parties and we will adhere to the holding enunciated by Referee Dugan in Award 18305 and 18306 and find that the Carrier violated the Agreement by its failure to give advance notice to the General Chairman of its plans to contract out the work in question. We will also adhere to those awards in holding that since claimants suffered no pecuniary loss we will deny Part 2 of the claim. See also Awards 18860, 18687, 19056, and 18968.

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 in accordance with the Opinion.

AWARD

Part (1) of the claim sustained; Part (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1972.