

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19440
Docket Number MW-19463

Robert M. O'Brien, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Atchison, Topeka and Santa Fe Railway Company
(- Coast Lines -

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

(1-a) The Carrier violated the "Foreman's and Laborer's Agreement" and Article IV of the National Agreement of May 17, 1968 when, without prior notification to the General Chairman, it contracted with outside forces to install curbs and gutters on the Carrier's property at Oceanside, California (System File 130-128-87).

(1-b) The Carrier again violated the "Foreman's and Laborer's Agreement" and Article IV of the National Agreement of May 17, 1968 when, without prior notification to the General Chairman, it contracted with outside forces to install sidewalks and driveways on the Carrier's property at Oceanside, California (System File 130-128-88).

(2-a) B&B employees Tom Deen, Jim Salyers, Gerald Hoeffs, C. R. Schaaf, Clem Otero and Neil Poulsen each be allowed 38 hours of pay at their respective straight time rates because of the violation referred to in Part (1-a) of this claim.

(2-b) B&B employees Tom Deen, Jim Salyers, Gerald Hoeffs, C. R. Schaaf, Clem Otero and Neil Poulsen each be allowed 60 hours of pay at their respective straight time rates because of the violation referred to in Part (1-b) of this claim.

OPINION OF BOARD: The dispute arose when Carrier assigned the work of installing curbs and gutters and the work of installing sidewalks and driveways to outside forces not covered by the "Foreman's and Laborer's Agreement." It did this, the Organization contends, without giving the General Chairman advance notice as it is required to do under Article IV of the May 17, 1968 National Agreement. It is the Organization's contention that Carrier's B and B forces (cement finishers) have been used in the past to perform all work in connection with the installation, repair and maintenance of curbs, gutters, sidewalks and driveways on Carrier's property. Such work has customarily and traditionally been performed by B and B forces; it was work within the Scope of their Agreement and should have been performed by them.

The Carrier defends contending that the work in question was part of an improvement program initiated by the City of Oceanside. It involved work on public street crossings. Carrier could not perform the work since it did not possess a contractor's license. The work in question has not been performed exclusively by B and B forces system-wide in the past, and was not work within the Scope of the Agreement.

We find that the work in dispute was work encompassed within the Scope of the Agreement and belonged to B and B forces (cement finishers). It is immaterial that Carrier did not possess a contractor's license. This does not affect the nature of the work involved.

We will adhere to the holding of 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 that hold that since claimants suffered no pecuniary loss we will deny that portion of the claim, 2-a and 2-b, requesting damages.

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.

A W A R D

Part 1-a and 1-b of the claim sustained while part 2-a and 2-b are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killian
Executive Secretary

Dated at Chicago, Illinois, this 17th day of October 1972.