

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19578
Docket Number MW-19776

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Norfolk and Western Railway Company (A&P Regions)

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

(1-a) The Carrier violated the Agreement when it used outside forces to perform the work of constructing a control tower, a computer building and a building for train crews containing an office, a washroom and a locker room at Roanoke Terminal (System file MW-RO-71-4).

(1-b) The Carrier violated Article IV of the May 17, 1968 National Agreement when it assigned the aforescribed work to outside forces without advance written notice to General Chairman J. H. Bowen.

(2) The members* of Carpenter Forces Nos. 1 and 2 and of Painter Force No. 1 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 subsequent to January 12, 1971 in the performance of the work referred to within Paragraph (1-a) of this claim.

*CARPENTER FORCES 1 AND 2

Foremen

Asst. Foreman

Tinner

M. A. McClure
J. R. Naff

R. E. Kincer

S. O. McAllister

1st Rate

2nd Rate

L. R. Etter
V. G. Noell
H. C. Farris
Bee Noell
R. S. Stanley
J. A. Staples
C. G. Irvin

C. W. Carter - cut back from 1st Rate
P. E. Dixon
J. A. Edwards
G. E. Vance
C. T. Horsley
C. D. Franklin
R. R. Crozier
B. G. Burk

3rd Rate

F. H. Glover - cut back from 2nd Rate
J. R. Dehart - cut back from 2nd Rate
C. A. Wade
W. H. Willis
J. H. Huff
D. L. Etter
D. Young

Helpers

E. E. Donald - cut back from 3rd Rate
J. R. Tyree - cut back - now working as sec. lab.
T. T. Coles - cut back - now working as sec. lab.
E. P. Elliott - Furloughed
J. C. Henley - Furloughed

*PAINT FORCE 1

Foreman

W. B. Humphreys

Painters

L. J. Barnett
G. D. Dudley
S. J. East
Leonard Scott
Troy White

Painter Helpers

E. G. Keeling
E. J. Tyler - cut back from Painter
R. L. Taylor - cut back - now working
as sec. lab.
P. J. Bolden, Jr. - cut back - now working
as sec. lab.

OPINION OF BOARD: This case relates to the contracting out of the construction of four projects (including complete new buildings) at Carrier's Roanoke terminal, beginning January 12, 1971. The Organization alleges, and the Carrier does not deny, that the Carrier failed to give the Organization the notice required by Article IV of the May 17, 1968 National Agreement prior to contracting out the work in question.

The Carrier argued that: (1) the Claimants did not possess all the skills required to complete the project and Carrier should not be forced to "piecemeal" the work; (2) that the Claimants had not done this type of work on an exclusive basis in the past; (3) that Carrier's failure to give notice under Article IV of the National Agreement does not validate the claim; and (4) that the Claimants were fully employed and did not show any loss of earnings during the period that the construction took place.

With respect to the first argument above, the Carrier did not, on the property, identify the skills lacking by Claimants for these projects. It is clear that Claimants did not attempt to hold themselves forth as anything but carpenters and painters; they made no claim for any other type of work, nor was it requisite to their position. In Award 5841 we said:

"It is a matter of common knowledge that in the building contracting field it is a common practice for the different classes of work to be performed by different crafts or classes. There is nothing in the record here suggesting a valid reason why that common practice should not have been allowed to prevail with regard to the construction work here involved."

We have rejected the exclusivity argument in a long line of cases, starting with Award No. 18305, and see no reason to depart from this reasoning. It is apparent that Carrier has ignored the provisions of Article IV and hence we shall sustain Part 1 (a and b) of the Claim.

The Carrier made no comment whatever, and presented no evidence on the property with respect to Claimants having suffered no monetary loss; therefore we cannot consider this argument raised only in the submission and brief of the Carrier (see Award No. 18030). In a related case, Award No. 19028, we said:

"In regard to the question of damages, Carrier argues that Claimants, being fully employed during the period of this dispute, suffered no loss of earnings and to assess damage would be nothing more than a penalty.

A close review of the record clearly shows that such a contention, as urged by the Carrier, was not raised on the property and since this Board has held on numerous occasions that issues not raised during the handling on the property cannot be considered by this Board, then Carrier's belated contention on the monetary claim cannot now be given any consideration."

Concurring in the above statement, we must reject Carrier's contentions in regard to "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

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That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1973.