

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19600
Docket Number MW-19383

Robert M. O'Brien, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Illinois Central Railroad Company

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

(1) The Carrier violated the Agreement when, without advance notice to the General Chairman as required by Article IV of the May 17, 1968 National Agreement, it assigned the work of installing drainage pipes on the Redwood District, Mississippi Division to outside forces. (System File MI-145-M-69/Case 699)

(2-a) Machine Operators A. C. Turman, B. M. Turman and R. L. Foreman 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 in the performance of machine operator's work in connection with the work referred to within Part (1) of this claim.

(2-b) B&B Foreman H. E. Beard, B&B Carpenters E. F. Davis and O. L. Johnson; B&B Laborers C. Bell and J. Green 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 the performance of other than machine operator's work in connection with 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.

OPINION OF BOARD: We are faced once again with an Article IV case wherein 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 installation of drainage pipes on the Redwood District, Mississippi Division to the Nichols Construction Corp. The work involved the digging of trenches and the installation therein of perforated drainage pipes.

Carrier, however, contends that the work in question is not reserved exclusively to Maintenance of Way employees; that it did not have adequate equipment to undertake a project of this size; that the work was hazardous; and that the claimants suffered no pecuniary loss, thus precluding an award of damages.

Carrier admittedly assigned this work to outside forces without notifying the General Chairman in advance as required by Article IV. The installation of the drainage pipes we feel is work encompassed within the Scope of the applicable Maintenance of Way Agreement.

However, the contentions raised herein have been similarly raised numerous times before and we will adhere to the holding enunciated by Referee Dugan in Award 18305 and 18306 and subsequently followed in Awards 18860, 18687, 19056 and 19191 and find that the Carrier violated Article IV 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 so holding that since claimants suffered no pecuniary loss we will deny Part (2-a), (2-b) and (3) of the claim. The damages issue was duly raised by Carrier on the property and not later waived as the Organization suggests.

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) of the claim sustained; Part (2-a), (2-b) and (3) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killian
Executive Secretary

Dated at Chicago, Illinois, this 14th day of February 1973.