

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23035
Docket Number MW-23070

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Western Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it assigned Engineering Department forces to pump water from a ditch at Oakland Yard January 3 through January 20, 1978 (Case No. 11315-1978-BWE).

(2) Water Service Maintainer George Saraba be allowed one hundred twelve (112) hours of pay at his straight-time rate because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: On November 3, 1977, Carrier advised the General Chairman, pursuant to Article IV of the May 17, 1968, National Agreement, that it intended to contract out certain work in the Oakland Yard. The Organization lodged no protest over the subcontract. The contract was awarded and while the contractor was engaged in the installation of the sub-surface drainage system, the area experienced a heavy rainfall. Pumps were brought in to drain the ditches and keep them drained so that work could continue. To keep the pumps in operation when required, the contractor requested that Carrier emergency inspectors assist in the operation of the pumps. They did so.

Claimant, a water service maintenance man, alleged that he should have been assigned to operate the pumps to pump out the ditches for the contractor. He claimed 112 hours of pay, the time during which the pumps were operated from January 3 to January 20, 1978.

Carrier denied the claim at every level. It was pressed by the union to the Board for resolution.

After a thorough review of the record before us, it is this Board's opinion that Carrier must prevail in this case. There is no question that the work in question here was subcontracted and that the Organization

did not contest the subcontracting of the work. Carrier's November 3, 1977 letter to the General Chairman clearly states that: This contract will also include necessary drainage work. Once this work had been subcontracted, Carrier no longer had control of same and the Organization cannot later be heard to claim it.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1980.