NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23423
THIRD DIVISION Docket Number MW-23375

John B. LaRocco, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(The Denver and Rio Grande Western Railroad Company

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

(1) The Carrier violated the Agreement when it assigned the work of replacing the roof of the office and freight dock at Alamosa, Colorado to outside forces (System File D-46-78/MW-13-79).

(2) The Carrier also violated Article IV of the National Agreement of May 17, 1968 when it did not afford the General Chairman a conference prior to the contracting transaction to discuss matters relating to the work referred to in Part (1) above.

(3) Foreman J. A. Otteson, Lead Carpenter R. N. Westbrook and Carpenters K. Westbrook, M. C. Laman, L. E. Laman, W. R. Johnson and M. J. Newchurch each be allowed pay at their respective rates for an equal proportionate share of the total number of man-hours expended by outside forces in performing the work referred to in Part (1) hereof."

OPINION OF BOARD: The Organization has brought this claim on behalf of seven Maintenance of Way Employes in the Bridge and Building Subdepartment. The Organization alleges that the Carrier violated the Scope Rule of the applicable Agreement and Article IV of the May 17, 1968 National Agreement when it utilized an independent contractor to place a new roof on the office and freight dock at Alamosa, Colorado.

On August 11, 1978, the Carrier notified the Organization's General Chairman that it intended to contract out the roof work. In the notice, the Carrier expressly asserted that the work was not exclusively reserved to Maintenance of Way employes and that all such employes were performing other essential work. The General Chairman responded by letter dated August 28, 1978, and requested a conference to discuss the contracting out of the roof work. Between September 18, 1978 and September 30, 1978, an outside contractor placed the new roof on the office and dock. No conference was held before the outside contractor performed the disputed work.

The Organization argues that the disputed work is exclusively reserved to the Carrier's Bridge and Building employes under the Scope clause. The Organization also contends that regardless of work exclusivity, Article IV prohibits the Carrier from contracting out work normally performed by the Claimants without first holding a conference. According to the Carrier, the placement of a new roof on the building is not customarily, historically and

exclusively reserved on a system-wide basis to Maintenance of Way employes so that Article IV is inapplicable. Alternatively, even if Article IV does apply, the Carrier claims it properly complied with the notice provisions of Article IV and the Organization failed to timely request a conference.

The Organization has failed to offer any evidence in the record which demonstrates that the disputed work was customarily, historically, traditionally and exclusively reserved to Maintenance of Way employes. This Board may not presume such exclusivity based solely on the unsupported assertions of the Organization. Third Division Award No. 21287 (Eischen). However, the Article IV notice and conference provisions apply to work which the Claimants could reasonably be expected to perform even though Maintenance of Way employes have not exclusively performed the work in the past. Third Division Award No. 18687 (Rimer); Third Division Award No. 18305 (Dugan). The relevant portion of Article IV of the May 17, 1968 National Agreement states:

> "ARTICLE IV - CONTRACTING OUT
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> In the event a carrier plans to contract out work within the scope of the applicable schedule agreement, the carrier shall notify the General Chairman of the organization involved in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than 15 days prior thereto.
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> If the General Chairman, or his representative, request a meeting to discuss matters relating to the said contracting transaction, the designated representative of the carrier shall promptly meet with him for that purpose. Said carrier and organization representatives shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached the carrier may nevertheless proceed with said contracting, and the organization may file and progress claims in connection therewith..." (Emphasis added).

The purpose of Article IV is to give the Organization, if it so desires, an opportunity to persuade the Carrier, in a conference, that employes of the Organization should be assigned the work that the Carrier intends to contract out. The Organization's right to request a conference is triggered when the Carrier gives the mandatory notice that it will be contracting out certain work. In this case, the Carrier served the Organization timely notice that it planned to have an outside contractor place the new roof on the office and dock. The issue is whether, by its letter dated August 28, 1978, the Organization timely exercised its right to request a conference. Article IV does not directly specify a time period during which the Organization must request a conference. However, the most reasonable construction of Article IV leads us to rule that the Organization, if it desired a conference, should have demanded it within fifteen days of the Carrier's August 11, 1978 letter. Article IV mandates that the Carrier notify the union that it intends to contract out

work by giving at least fifteen days advance notice which raises the implied obligation that the Organization may demand a conference during the fifteen day period. Since the Organization did not request a conference within fifteen days of the Carrier's notice of intent to contract out the disputed work, the Organization lost its right to demand an Article IV conference in this particular instance.

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 Employes involved in this dispute are respectively Carrier and Employes 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. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November 1981.