NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23560
THIRD DIVISION Docket Number MW-23811

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Louisiana and Arkansas Railway Company

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

(1) The Carrier violated the Agreement when it assigned outside forces to spray bridges with fire retardant between Baton Rouge and New Orleans, Louisiana from May 22 to June 5, 1979 (Carrier's File 013.31-211).

(2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it did not give the General Chairman advance written notice of its intention to contract said work.

(3) As a consequence of the aforesaid violation, B&B Foreman H. H. Hoose, B&B Mechanics H. Williams and E. Jackson, B&B Helpers M. Cryer and C. Love and B&B Laborers G. Adams and J. Wells each be allowed pay at their respective rates for an equal proportionate share of the man-hours expended by outside forces."

OPINION OF BOARD: Carrier subcontracted the spraying with fire retardant of its wood trestle bridges between Baton Rouge and New Orleans. The work was performed between May 22 and June 5, 1979.

The Organization argues that Carrier violated Rule 1 (Scope), Rule 2 (Seniority), and Article IV of the May 17, 1968, National Agreement. Carrier argues that the Scope Rule contained in the Agreement is general in nature and that it does not exclusively reserve the work in question (spraying of fire proofing) to the Organization. Since the work does not belong exclusively to the Organization, Carrier believes that it does not have to notify the General Chairman of its intention to subcontract.

This Board has been called on many times to review claims wherein covered work is subcontracted and Carrier has failed to notify the General Chairman that subcontracts are to be entered into. In each of these cases, this Board has expressed its displeasure at the failure of Carrier to notify the General Chairman when such subcontracts are entered into. We are again faced with the same situation.

Article IV of the May 17, 1968, Agreement requires that Carrier notify the General Chairman when it plans to contract out work within the scope of the applicable Schedule Agreement. In the instant case, the work in question was the spraying of fire proof chemicals on timber bridge trestles.

Carrier admits that BXB Gang 696 did apply the fire proofing under the supervision of the distributor of the chemical, on one previous occasion. It must be concluded that the work in question has been done by Carrier employes and is work covered by the Agreement.

Article IV requires that Carrier notify the General Chairman when such work is contracted out. Carrier's position that it must notify the General Chairman of subcontracting only when the work in question is exclusively reserved to the Organization by contract is not appropriate. That is not what Article IV says.

It is the opinion of this Board that Carrier has violated Article IV of the May 17, 1968, National Agreement by failing to notify the General Chairman in writing of its intention to contract out the fire proofing of the wooden bridges between Baton Rouge and New Orleans, Louisiana. For Carrier to ignore this requirement because it thinks the work is not exclusively reserved to the Union or because it claims that it does not have the equipment to do the job is unacceptable. The language of Article IV was written to give the General Chairman an opportunity to discuss these aspects of the situation with Carrier. Proper notification under Article IV is a prerequisite to subcontracting of covered work. Carrier failed to meet that requirement in this instance and consequently has violated Article IV of the May 17, 1968, National Agreement.

Since Carrier has violated Article IV, it remains for this Board to address the Organization's claim for compensation. The Board has reviewed many requests for compensation for Article IV violations and has generally held that where Claimants are fully employed and no loss of earnings were demonstrated, no monetary damages are awarded. We so find in this case (see Award No. 21646, Referee Ables; and Award 23354, Referee Dennis).

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 violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of March 1982.