NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24136
Docket Number MW-23749

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Southern Pacific Transportation Company
((Pacific Lines)

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

(1) The Carrier violated the Agreement when it assigned the work of constructing inspection pits at El Paso, Texas to outside forces beginning January 2, 1979 (System File MofW 152-859).

(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, the claimants* each be allowed pay at their respective rates for an equal proportionate share of the total number of man-hours (2455 straight time hours and 2938 overtime hours) expended by outside forces.

*The claimants are:

WESTERN SENIORITY DISTRICT, B&B GANG NO. 15

R. E. Daughtry	Foreman
G. S. Romero	Assistant Foreman
G. S. Brantelien	Carpenter
E. O. Durate	Carpenter
M. A. Eldridge	Truck Driver
R. M. Martinez	Welder

EASTERN SENIORITY DISTRICT, B&B Gangs No. 17 and 3

B&B No. 17

Charles F. Miller	Foreman
G. H. Gonzales	Welder
R. C. Bogart	Carpenter
E. I. Snelling	Carpenter
Mike Harvey	Carpenter

B&B No. 3

Robin Mills	Foreman
Berkie Duncan	Helper
Manny Parra	Carpenter
Andy Rolnick	Helper
Doug Sauer	Tractor Operator"

OPINION OF BOARD: The Carrier submitted to the General Chairman (in October of 1978), a letter expressing an intention to contract out the excavation of three (3) inspection pits and allegedly it was stated that the remainder of the work would be performed by Carrier forces.

Agreement was reached concerning the use of outside forces however in the following January it is asserted that employes of the outside contractor were assigned to perform certain additional work of building forms for concrete, welding, concrete work, clean-up work, etc.

In addition to its assertion that the Carrier violated the basic Agreement when it contracted out the work in question the Employes insist that the action of the Carrier far exceeded the stated intention concerning excavation of three (3) pits and consequently Article IV of the May 17, 1968 Agreement was violated.

There is no question under this record that the Carrier gave notice under Article IV but the dispute centers around the extent of the work performed. Unquestionably if a Carrier gives a limited notification of intention to sub-contract and the General Chairman agrees to certain work being performed in accordance with that notification there is nonethless a violation if the Carrier extends the work far beyond the work originally contemplated because in essence the Carrier deprives the Employes of the right to present their views concerning the potential contracting out. However, here the Carrier insists that the original notification was augmented through various discussions and that the Organization was kept informed of the extent of the work involved and that at no time did the Carrier contract out work significantly beyond the scope of the work discussed with the Organization's representatives.

Essentially then, the dispute presents a fact question for resolution rather than a question of the permissible extent of work under Article IV of the May 17, 1968 Agreement. In the view of this Board the Organization has failed to establish by a substantive preponderance of the evidence that the Carrier exceeded the stated extent of the work in question and as a matter of proof, we will dismiss the claim.

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 dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Assistant Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of January 1983.