

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24157
Docket Number MW-24197

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employes
{ Lake Superior & Ishpeming Railroad 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 paint the tail track area of the Marquette ore dock beginning May 26, 1980.

(2) Because of the aforesaid violation, each Bridge and Building employe furloughed at the close of work on July 25, 1980 be allowed one day's pay at his respective straight-time rate for each day on which outside forces performed the work referred to in Part (1) hereof."

OPINION OF BOARD: This dispute concerns the Carrier's employment of an outside contractor in 1980 to paint the outer end of its Marquette ore dock instead of assigning such work to Bridge and Building Painters.

The Board notes that the principal basis of the Organization's argument rests on the assertion that Bridge and Building Painters painted the inner end of the ore dock in 1979. The Carrier vigorously denies this assertion and states that the 1979 work was performed by the same outside contractor who was employed in 1980. There is no support for the Organization's assertion. As can best be determined from the record, the Carrier properly complied in 1979 with Rule 4, concerning subcontracting notice requirements, in correspondence with the Organization.

There can be no finding that the work in 1980 was other than completion of work, subcontracted with proper notice, commenced in 1979.

In sum, the parties have not offered a sufficiently clear picture of what actually transpired as to the work and discussions thereon for the Board to make any analysis that rule violation occurred.

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 claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of February 1983.

