

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24242
Docket Number MW-23861

Carlton R. Sickles, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Fort Worth and Denver Railway Company

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

(1) The Carrier violated the Agreement when it assigned excavation work (restoration of embankments and cuts) beginning at Mile Post 300 on August 1, 1979 to outside forces (System File F-39-79/MS-2).

(2) Because of the aforesaid violation, the Claimants listed below each be allowed pay at their respective rates for an equal proportionate share of the total number of man-hours expended by outside forces beginning August 1, 1979.

L. D. Swift	R. D. Lewis
C. R. Burns	J. E. Jackman
C. D. Sherman	M. O. Lindley
J. J. Tubbs	W. J. McGee
R. S. Collins	G. H. Coady
E. D. Baker	J. D. Scott
B. D. Diggs	M. L. Henderson
G. A. Cody	C. M. Beard
E. Motley	V. T. McKay
B. J. Sperry	J. B. Crowell
	B. E. Hale"

OPINION OF BOARD: In the instant matter, the Carrier contracted out certain work which the Organization alleges is within the scope of its Agreement with the Carrier. The Organization further alleges that the Carrier did not satisfy the requirements of Article IV of the National Agreement of May 17, 1968 since the Carrier did not give the General Chairman advance written notice of its determination to contract out the specific work.

The Carrier cited its letter of May 1, 1979 as the notice which is required under Article IV. The Organization responded in its letter of October 25, 1979 that it did not consider this letter as adequate notice citing specifically, "... where is the Carrier's request to contract the work at the date and location cited within this claim? Surely the Carrier cannot construe Mr. Tisdale's letter of May 1st as a key to open the door for any and all of the Fort Worth and Denver Railway's earth moving projects, thereby depriving the machine operators of that work which is customarily and historically theirs under the prevailing agreement rules such as ..."

This same issue was considered in Public Law Board 2529 (Award 7) which provided as follows: "In concrete and specific terms, Rule 4 (b) provides that the Carrier shall notify the General Chairman of the Organization in writing as far in advance of the date of the contracting transaction and provides for a 'meeting to discuss matters relating to said contracting transaction' which might 'reach an understanding concerning said contracting'. (Underscoring added.)"

This Board finds that since this issue concerning the same parties and the same subject matter has been considered concerning the same alleged letter of notification to the General Chairman and it not being convinced that the decision in Public Law Board 2529 (Award 7) is clearly erroneous on its face, it will decide this matter in a like manner.

The claim for each-named Claimant is sustained for wage loss suffered, i.e., the named Claimant's proportionate share of time when added to his straight-time compensable time for period involved shall be limited so as not to exceed the total of his normal compensable time.

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 Employee involved in this dispute are respectively Carrier and Employee 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 14th day of March 1983.

