

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24281
Docket Number MW-24080

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Chicago, Milwaukee, St. Paul and Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it assigned excavation work in connection with the installation of a 'Drop Table' in Building LD-35 at Milwaukee, Wisconsin to outside forces on October 3, 4, 5, 16 and 17, 1979 (System File C#118/D-2390).

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

(3) As a consequence of the aforesaid violations, Equipment Operator D. A. Leis and M. Seider each be allowed pay at their respective rates for an equal proportionate share of the forty-seven (47) hours expended by outside forces."

OPINION OF BOARD: Under date of September 18, 1979 and subject of "Contracting Out", the Carrier advised the Organization as follows:

"This will serve as notice of the Carrier's intent to subcontract work in connection with the installation of a 100-ton drop table in the north end of Building LD 35 at our Shops in Milwaukee. The work to be done relative to this project includes considerable excavation, carpentry, roofing, concrete, brick wall alterations, demolition, track work, erection of metal buildings, etc., along with heating, plumbing, electric service, lighting, piping, relocation of heavy machinery and equipment, etc. It is the desire of the Carrier and intent to progress as much of this work with railroad personnel as conditions permit. In all probability, it will be necessary to contract such items of work for which the railroad does not have adequately qualified personnel or necessary equipment to perform the work required. Such work will involve the relocation of heavy machinery, erection of metal buildings, operate excavation and hauling equipment, alteration to brick walls, plumbing (where licensed plumber is required), and a small portion of the heating and electrical work. It is obvious that the work in question involves various crafts and is not limited to BMW.

As previously indicated, it is the Carrier's intent to progress as much of the work as possible with railroad personnel. It is obvious, however, that due to lack of specialized equipment and the fact that Carrier employees do lack sufficient expertise to perform segments of the work in question, the Carrier does have the right to contract the work.

The Carrier's right to subcontract this work has been established by past practice and numerous Board Awards."

According to the Organization, work on this project commenced on October 3, 1979 -- 15 days later.

Carrier's letter was in compliance with Article IV of the May 17, 1968 National Agreement, which reads in pertinent part as follows:

"ARTICLE IV - CONTRACTING OUT

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.

If the General Chairman, or his representative, requests 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 said claims in connection therewith ..."

The Agreement clearly requires the Carrier to discuss such proposed subcontracting "if the General Chairman ... requests" (emphasis added). In this instance, according to the record before the Board, the Organization requested such a meeting, and it was held on the date requested by the Organization.

As to the excavation work specified in the claim, such was included in the Carrier's letter of September 18, 1979. The claim concerns a small initial portion of the entire project. The Carrier is on firm ground in assuming it need not fragment work of this obviously large scale and complex nature. Award No. 20899, citing many previous awards, states:

"In the latter context, the fact that Carrier's signal employes may have been used in the past to perform work, in whole or in part, in connection with a major installation, does not prejudice Carrier's right under the specific provisions of the Scope Rule to contract out similar installations in the future.

Secondly, we find no evidence in the record that the disputed work could in fact have reasonably been segregated from the whole construction project and assigned to Claimants; nor is there any Rule in the Agreement requiring Carrier to make such fragmentation of the work."

The Carrier proceeded correctly under Article IV, and the claim is without merit.

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 Agreement was not violated.

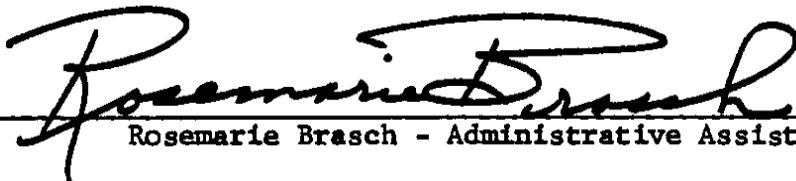
A W A R D

Claim denied.

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 31st day of March 1983.