

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24484
Docket Number MW-24016

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ The Atchison, Topeka and Santa Fe Railway Company

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

(1) The Carrier violated Article IV of the May 17, 1968 National Agreement when, without prior notification to the General Chairman, it assigned work of the Maintenance of Way and Structures Department at Topeka and Lawrence, Kansas to outside forces beginning July 13, 1979 (System File 4-P-360-4/11-1940-20-121).

(2) Because of the aforesaid violation, Mr. R. Gasper be allowed eight (8) hours of pay for each day outside forces were used to perform the work referred to in Part (1) hereof."

OPINION OF BOARD: A review of the record by this Board establishes that Carrier did not give notice to the organization of "plans to contract out work within the applicable schedule agreement", as required by Article IV of the May 17, 1968 National Agreement, when it contracted out certain work in July 1979. Although the Carrier offers a variety of reasons for not giving notice, including worsening weather conditions which required a rapid response to keep the road in repair, the Article requires that some notice be furnished to the organization. See Third Division Award No. 23578.

In that Award Referee J. B. LaRocco also held that:

"A long line of Third Division Awards precludes us from providing the claimants with pecuniary relief where they have not proved loss of work opportunity or loss of earnings due to the Carrier's failure to tender the required notice (unless the Carrier has flagrantly or repeatedly failed to comply with the applicable rule-ed.). See Third Division Awards No. 23354 (Dennis); No. 21646 (Ables); No. 20275 (Eischen); No. 20671 (Eischen); No. 18305 (Dugan). In this case, we do not find any evidence of a malicious motive underlying the Carrier's failure to give the ... notice."

Thus, this Board reiterates that Carrier had an obligation to furnish the mandated notice, but the claim for monetary relief is denied.

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 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 July 1983.

