

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24884
Docket Number MW-24965

Marty E. Zusman, 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 the Agreement when it assigned excavation and backfilling work, in connection with a span renewal project at Bridge 65.7, on September 29, 30 and October 1, 6 and 13, 1980 to outside forces (System File 210-400.A8-8014).

(2) The Carrier also violated Appendix No. 8 (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 violations, Group 5 Machine Operators D. L. Cummings and L. R. Foose shall each be allowed twenty and three-fourths (20-3/4) hours of pay at their respective rates.

OPINION OF BOARD: This is a dispute initiated by the Organization on behalf of Eastern Lines Group 5 Machine Operators D. L. Cummings and Lawrence R. Foose. The Organization's claim is that the Carrier violated the agreement in assignment of work to outside forces when it did not give proper notification of its intent to contract out work as specified in Appendix No. 8, Article IV of the May 17, 1968 National Agreement.

The instant dispute arose out of the actions of Carrier when it contracted work underway on pipes to an outside construction company. With respect to the case at bar the Board finds substantial evidence present to indicate Carrier violation of Article IV in that Carrier not only failed to give advance notice as required under the agreement, but did not even attempt to give notice to the General Chairman. That such work was within the scope of the agreement is apparent by the use of Maintenance of Way employees and equipment. The record before this Board is absent of any substantive evidence to substantiate Carrier's claim that the project had urgency or that proper equipment could not have been made available.

While the Board is aware of the emptiness of providing for no remedy or relief when sustaining an award, a special situation exists when the Carrier violates Article IV and when all employees are fully employed and there is no demonstration of actual loss of earnings as in the case at bar. Such ruling to award no compensation by this Board is consistent with a long list of past awards of the National Railroad Adjustment Board (Third Division Awards 18305, 23203, 23354, 23560, 23578). Given these prior awards Claimants Cummings and Foose may not receive compensation for Carrier violation of Article IV.

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 Carrier violated the agreement.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1984

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