

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24888

Docket Number MW-24988

Marty E. Zusman, Referee

PARTIES TO DISPUTE: ( Brotherhood of Maintenance of Way Employees  
( Union Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it assigned the work of preparing and painting five (5) bridges to outside forces beginning July 7, 1981 (System File 5-18-13-14-54).

(2) The Agreement was further violated when the Carrier did not give the General Chairman at least fifteen days prior written notification of its plan to assign said work to outside forces and when it did not afford the General Chairman a conference prior to the contracting transaction to discuss matters relating to the work referred to in Part (1) above.

(3) Because of the aforesaid violation, each member of Nebraska Division Paint Gangs 1431 and 1432, employed or furloughed during the claim period, shall be allowed pay at their respective rates for an equal proportionate share of the total number of man-hours expended by outside forces.

OPINION OF BOARD: Claim before the Board centers upon the issue of whether Carrier violated the Agreement and specifically Rule 52 which reads in pertinent part:

"In the event the Company plans to contract out work because of one of the criteria described herein, it shall notify the General Chairman of the Organization in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than fifteen (15) days prior thereto, except in 'emergency time requirements' cases. If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the Company shall promptly meet with him for that purpose."

In the instant case Carrier notified the General Chairman by letter of April 27, 1979 of its intent to contract out work within the scope of the controlling Agreement for the painting of six truss bridges. By letter of July 13, 1979 the Organization after some delay responded that they were not agreeable and would like to further discuss this issue. On July 31, 1979 the Carrier indicated by letter that "although the work has been deferred at this time, I am agreeable to discuss the matter with you on any mutually convenient time." The Board finds no evidence from the record as handled on property that the Organization requested a meeting or that said meeting to discuss Carrier's intent to contract out the deferred work occurred. The Board also notes that the instant dispute arose from a letter dated June 23, 1981 in which Carrier announced plans to proceed with the deferred work and indeed did so.

Clearly the intent of Rule 52 is to maintain a good working relationship between the parties by providing an opportunity for employees to convince the Carrier that outside contracted work is not required as the employees can legitimately provide such services within the scope of the agreement. The Board notes that it is mandatory under the provisions of Rule 52 that the Company notify the General Chairman in advance of the event and that the Company meet with the General Chairman (or their respective representatives) if such a request is made. It is the opinion of the Board that the Carrier properly notified the General Chairman by letter dated April 27, 1979, affording a bonafide opportunity for conference. The Board further notes that the carrier did not deny or refuse any request for a conference and that the deferred work later performed at Carrier convenience did not therefore violate the agreement.

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

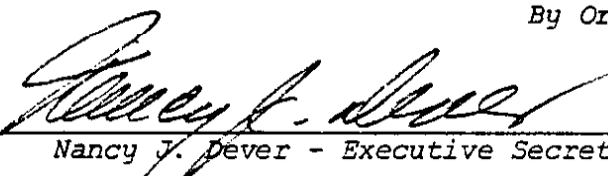
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Nancy J. Dever - Executive Secretary

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