

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25007
Docket Number MW-25149

Thomas F. Carey, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Atchison, Topeka and Santa Fe Railway Company

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

(1) The Carrier violated Appendix 8 (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 in the vicinity of Pueblo, Colorado to outside forces (System File 210-400.A8-8121/11-1940-20-152).

(2) Because of the aforesaid violation, Machine Operators G. J. Penrod and T. L. Laney shall each be allowed pay at their respective rates for an equal proportionate share of the man-hours expended by outside forces beginning sixty (60) days retroactive from July 22, 1981."

OPINION OF BOARD: This dispute resulted when an outside firm was given work to move and shape earth in order to build roads and shoulders along the right-of-way between Pueblo and Pinon, Colorado. According to the record the claimant contends this work was contracted out without advance notice as required under Article IV of the May 17, 1968 National Agreement. Although the Carrier contends that the work was given out because they did not own equipment large enough to do the job, it has been held in other Third Division cases that this is not in itself sufficient reason to avoid giving notice as required in the Article. See Third Division Award No. 24484.

In that Award Referee J. P. Sirefman, held that:

"Although the Carrier offers a variety of reasons for not giving notice, ... the Article requires that some notice be furnished to the organization."

Claimants' petition for pay due to the failure of the Carrier to provide notice is denied since Claimants were fully employed and lost no earnings. In Award No. 23578 Referee J. B. LaRocco 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...."

This Board restates that the 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:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.