NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25103
THIRD DIVISION Docket Number MW-23963

Wesley A. Wildman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Fort Worth and Denver 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 grading work between Mile Post 336 and 338, between Mile Post 349 and 351 and between Mile Post 372 and 375 to outside forces (System File F-44-79).

(2) Because of the aforesaid violation, the claimants listed below each be allowed pay at their respective rates for an equal proportionate share of the total number of man-hours expended by outside forces beginning sixty (60) days retroactive from December 12, 1979.

L. D. Swift	R. D. Lewis
C. R. Burns	J. E. Jackman
C. D. Sherman	M. O. Lindley
J. J. Tubbs	W. J. McGee
R. S. Collins	G. H. Coody
E. D. Baker	J. D. Scott
B. D. Diggs	M. L. Henderson
G. A. Cody	C. M. Beard
E. Motley	V. T. McKay
B. J. Sperry	J. B. Crowell

B. E. Hale"

OPINION OF BOARD: The Agreement between the parties in this case contains the following language (Rule 4(b)) relating to notice to the Organization when contracting-out is contemplated by the Carrier:

> "In the event the Company plans to contract out work ... 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. The Company and the Brotherhood representative shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached, the Company may nevertheless proceed with said contracting and the Brotherhood may file and progress claims in connection therewith."

Pursuant to and in claimed compliance with this requirement, Carrier sent a notice to the Organization which reads in relevant part as follows:

"... The Fort Worth and Denver Railway Company plans to contract extensive restoration of embankments and cut sections at various locations between M. P. 0 and M. P. 454, Fort Worth to Texline, Texas, during the remaining year 1979, and throughout the year 1980.

The work will be accomplished by use of Dumora grading equipment and superload scrapers, assisted as necessary by related machines. The Railway Company is not adequately equipped to handle the work, therefore, we are requesting the Company be allowed to proceed with contracting said work.

May we please have your concurrence to let the above-described work to contract as provided by Rule 4(b)...."

In questioning (on several grounds) the propriety of the contracting-out which led to this case, the Organization asserts as a threshold matter that what it styles as the "blanket notice" contained in Carrier's letter does not (given its lack of specificity regarding the time, place and nature of each individual "contracting transaction") constitute the sort of notice demanded by the Agreement language we have reviewed above.

This same issue, involving the same Carrier and Organization who are parties to this case and the identical Agreement language and letter from the Carrier, has of this writing, already been the subject of two prior awards. In the first of these (Public Law Board 2529--Award 7) it was held, in concurrence with the position of the Organization, that the Carrier letter did not provide notice of any specific "contracting transaction" and that, therefore, with regard to the precisely described "transaction" before that Board the so-called "blanket notice" fell short of meeting the relevant notice of requirements of 4(b) of the Agreement. In the second award on this identical issue, (Award No. 24242, Third Division) the Board, finding that the prior Award was not "clearly erroneous on its face" decided the matter "in a like manner".

This Board also, then, concluding that the prior determinations on this issue have merit and plausibility and are not "clearly erroneous", sustains the position of the Organization that, with regard to the "contracting transaction" specified in the claim in this case, the notice requirements of 4(b) were not met adequately by the Carrier.

For the sake of consistency with regard to remedy we also adopt verbatim the claim determination language of the two previous awards, to wit:

"Claim for each named claimant is sustained for wage loss suffered; i.e., the named claimant's proportionate share of time when added to his straight-time compensable time for period involved shall be limited so as not to exceed the total of his normal compensable time."

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 Employes involved in this dispute are respectively Carrier and Employes 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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1984.