

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25335
Docket Number MW-25372

Eckehard Muessig, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Denver and Rio Grande Western Railroad Company

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

(1) The Carrier violated the Agreement when it assigned grading work in connection with a Track extension project at Rollensville, Colorado to outside forces (System File D-6-82/MW-13-82).

(2) The Carrier also violated 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 violation, Work Equipment Operators K. A. Dye, J. E. Howell, C. Mings, J. I. Matlock and furloughed Laborers E. A. Fernandez, J. L. Steele and N. R. Gleason shall each be allowed an equal proportionate share of the total number of manhours (straight time and overtime) expended by outside forces in performing the work described in Part (1) hereof beginning sixty (60) days retroactive from April 21, 1982.

OPINION OF BOARD: This claim arose after the Carrier entered into a contract with an outside firm for certain grade work on its property without first notifying the Organization within fifteen (15) days in advance of the Carrier's contracting transaction. The Organization asserts the Carrier's failure to notify it within 15 days constituted a violation of Article IV of the May 17, 1968 National Agreement.

The Carrier advances a number of assertions and cites Awards in support of its denial of the claim. It contends that the Organization failed to specify a date of occurrence for the claims, that the work contracted out is not exclusive to the Organization, that the Carrier did not have the labor force or equipment necessary to perform the work in question, that the burden of proof has not been met, and that the Claimants (for stated reasons in the record) are not proper Claimants.

The Board finds that the essential issue here is whether the 15-day notice requirements of the Agreement cited above, are applicable to the facts presented herein.

Article IV of the National Agreement is quite explicit on its face and its intent is further clarified by the parties' Letter of Understanding dated December 11, 1981. Neither the Rule nor the Letter of Understanding contains exclusionary provisions that would support the Carrier's arguments. Accordingly, the issue is not one of exclusivity nor is it one that rides on, or is controlled by, the identification of a date of occurrence.

In essence, the parties have contractually agreed to serve advance notice when contracting out is contemplated. We find the facts and circumstances of record here fit these advance notice requirements of the Agreement.

In sum, the Carrier violated the notice of Article IV of the National Agreement. However, under the circumstances here, monetary damages are not awarded.

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

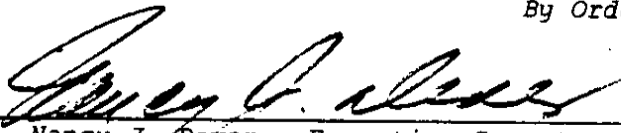
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1985.