

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26256
Docket Number MW-25938

Lamont E. Stallworth, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Consolidated Rail Corporation

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

(1) The Carrier violated the Agreement when it assigned outside forces to repair cylinder heads on June 18, 21, 22, 29, July 3, 9, 11 and 16, 1979 (System Docket CR-194).

(2) Because of the aforesaid violation, Maintenance of Way Repairman R. C. Greene and all other repairmen working at the Canton Maintenance of Way Repair Shop on the dates mentioned in Part (1) hereof shall each be allowed pay at their respective rates for an equal proportionate share of the eighty-three (83) man-hours expended by outside forces in performing the work referred to in Part (1) hereof."

OPINION OF BOARD: The Claimants were all employed as repairmen in the Maintenance of Way Repair Shop in Canton, Ohio, at the time this dispute arose. Sometime prior to the occurrence in question, the Carrier contracted with an outside company to perform repair work on cylinder heads. The Organization contends that this action was a violation of the Scope and Work Classifications Rule, which states in relevant part,

"Before work covered by this Agreement is contracted, the Chief Engineer or his designated representative will confer with the General Chairman, except in emergencies. Emergencies, as that term is used herein applies to fires, floods, heavy snow and like circumstances."

The Organization further contends that this repair work was in their members' exclusive domain because the Scope Rule reserves to them "repairs to mechanical tools, on-track equipment and roadway machinery used by Maintenance of Way employees."

The Carrier opposes the Claim on several grounds. First, the Carrier objects to the Claim on procedural grounds because the initial Claim failed to specify any individual employees who were allegedly harmed by the Carrier's actions. Instead, the initial Claim stated that it was being made "in behalf of the members of Local 3050" and described the work done and the dates on which it was allegedly done. In later references to the Claim the Organization stated that it was being brought "in behalf of R. C. Greene and Members of Subordinate Lodge 3050."

With regards to the merits of the case, the Carrier contends now, as it did on the property, that the cylinder head work was subcontracted out because faulty head work performed by the Local's members had resulted in several engine failures. According to the Carrier, a lack of qualified employees is an acceptable reason under the contract justifying the Carrier to subcontract work. The Carrier also argues that the Scope Rule does not reserve to the Claimants alone the work in question.

As for the procedural question, this Board has held on prior occasion (see Third Division Award 11372) that Claimants need not be specifically named in a claim in order for the claim to be sufficient, but that the aggrieved must be described with sufficient clarity that the Carrier can readily identify same. In this case the Carrier contends it cannot identify Claimants from the Claim as stated. The Organization must prove, by evidence in the record, that the identity of the aggrieved can be readily ascertained by the Carrier.

At first blush the Claim here appears to be sufficient, under these criteria. It specifies the type of work subcontracted out, the dates on which it was allegedly done, and the amount of time it took. One might assume from this part of the Claim the Organization is making a Claim on behalf of the most senior repairman (or repairmen) who worked on a specific date.

However, the Claim does not state this, and other parts of the Claim appear to contradict this interpretation. The initial sentence states that the Claim is being brought on behalf of all the members of the Local. This language suggests that it is demanding a certain unspecified amount of money as damages from the Carrier, which it intends to distribute among all of its members. It also suggests that all the members of the Local have been adversely affected by the Carrier's action.

Under these circumstances it cannot be said that the identity of the Claimants is known to the Carrier or can be determined easily from its record. Therefore the Claim must be dismissed.

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 Claim is barred.

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Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of March 1987.