

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Davenport, Rock Island and North Western Railway Company

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

(1) The Carrier violated the Agreement when it assigned outside forces to perform track work between Mile Posts 169 and 179 from July 24 through August 17, 1984 (System File 31-3).

(2) As a consequence of the aforesaid violation, Extra Gang Foreman G. Gladfelter, Truck Driver A. Avila, Machine Operator J. Shepard and Track Laborers D. Steffen, M. Hughes, S. Moss, S. Serrano, L. Andresen, D. Goldsberry, W. Thomas, A. Lievanos, F. Reyes, J. Rea, D. Williams, J. Diaz, Robert Mickle, V. Madison, G. Castel and L. Gomez shall each be allowed one hundred fifty-two (152) hours of pay at their respective straight time rates."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimants hold seniority within the Track and Roadway Equipment Sub-Departments of the Carrier's Maintenance of Way and Structures Department. At the time of the incidents involved in this Claim, one of the Carrier's parent companies was the Milwaukee Road.

In 1982 and 1983 the Carrier notified the Organization that outside labor would be used for a welded rail project. By letter dated March 22, 1984, the Carrier's General Manager wrote the General Chairman as follows:

"Please be advised that, in late spring of 1984, the DRI&NW will be sledding and laying welded rail for 10 miles between Mile Post 168.85 and 178.85.

Most of this work will be done by Milwaukee road forces and equipment, as none of our people are qualified to perform this work, nor do we have the necessary machinery. As you know, the Milwaukee is one of our parent companies and has done this type of work for us in the past.

During this period, all DRI&NW section people holding seniority will be employed."

During the period July 24 through August 17, 1984, Milwaukee forces performed track construction and maintenance work between Mile Posts 169 and 179, specifically, laying switches, unloading material and other maintenance. At the time the Milwaukee forces performed the work at issue, the Carrier did not have the necessary equipment or employees to perform the work. Further, Claimants were working and lost no time due to the work attached to the welded rail project. In the past, Milwaukee extra gangs have performed similar work.

First, contrary to the Organization's argument, we find that the notice given by the Carrier encompasses the work at issue. The notification given by the Carrier in 1982 and 1983 along with the letter of March 22, 1984, amounted to sufficient notice that the work involved in this matter (i.e., laying switches, unloading material and other maintenance) would be performed by non-Carrier forces to satisfy the notice requirements found in Rule 1 for such work. Cf., Third Division Award 26766 where the March 22, 1984, notice was held insufficient for picking up scrap rail and other material.

Second, in this case we are unable to agree with the Organization's argument that a sustaining award is required due to the alleged lack of a meeting prior to the contracting of work. While the note to Rule 1 mandates a meeting of the parties concerning contracting of work, the Rule also has a commensurate requirement that the Organization must first "request ... a meeting to discuss matters relating to the said contracting transaction" Thus, giving the Organization the benefit of the doubt that no meeting occurred (an assertion which the Carrier disputes), the record fails to disclose if a request for such a meeting was ever made.

Third, upon balance and under the circumstances properly presented by this record, the lengthy practice of using Milwaukee forces for similar work; the lack of personnel and equipment for the Carrier to do the work at the prescribed time (facts not refuted on the property); the fact that no loss of employment was suffered by Claimants and the lack of any evidence that the Carrier otherwise sought to avoid its contractual obligations all lead us to conclude in this case that the Claim is without merit. We shall therefore deny the Claim.

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 January 1988.