

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Duluth, Missabe and Iron Range Railway Company

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

(1) The Carrier violated the Agreement when it contracted with outside concerns for the fabrication of signs to be used at the following locations:

- (a) Duluth Shiploader and the Spirit Lake Branch
- (b) 'CAUTION' sign for Dock No. 5
- (c) Storehouse and Scrap Bin at Two Harbors.

(2) The Carrier also violated Supplement No. 3 when it did not give the General Chairman advance written notice of its intention to contract out said work.

(3) As a consequence of the violation referred to in Parts (1)(a) and (2) above, the senior B&B Department employe furloughed during the time the work was contracted out shall be allowed eight (8) hours of pay at the B&B carpenter's rate in effect at the time the work was contracted. As a consequence of the violations referred to in Parts (1)(b) and (2) above, the senior B&B Department employe furloughed during the time the work was contracted out shall be allowed eight (8) hours of pay at the B&B carpenter's rate in effect at the time the work was contracted. As a consequence of the violations referred to in Parts (1)(c) and (2) above, Carpenter Milan Arfsten shall be allowed sixteen (16) hours of pay at the B&B carpenter's rate in effect at the time the work was contracted."

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.

The record shows that in 1984 the Carrier ordered several signs from outside vendors. The Organization argues this constitutes a violation of the Agreement and further contends the Carrier violated Supplement #3 when it failed to give the General Chairman advance written notice of its intentions. The Carrier does not dispute the fact that B&B employees have made signs over the years. Notwithstanding, the Carrier insists the record establishes that B&B employees did not make all the Carrier's signs.

We find the record establishes that the painting of signs has customarily been assigned to B&B forces by the Carrier. In fact, the on-the-property correspondence reveals the Carrier continues to have a B&B sign shop. Additionally, the Carrier's Director of Personnel emphasized in a letter dated September 14, 1984, that the Carrier would continue to manufacture signs which could "economically be made there." Notwithstanding, Director of Personnel Sutton also indicated the Carrier did not concede it had forfeited its right to purchase from vendors when necessary.

We find that Supplement #3 controls this issue. In pertinent part, the Supplement states:

"Contracting of Work

- (a) The Railway Company will make every reasonable effort to perform all maintenance work in the Maintenance of Way and Structures Department with its own forces.
- (b) Consistent with the skills available in the Bridge and Building Department and the equipment owned by the Company, the Railway Company will make every reasonable effort to hold to a minimum the amount of new construction work contracted.
- (c) Except in emergency cases where the need for prompt action precludes following such procedure, whenever work is to be contracted, the Carrier shall so notify the General Chairman in writing, describe the work to be contracted, state the reason or reasons therefore, and afford the General Chairman the opportunity of discussing the matter in conference with Carrier representatives. In emergency cases, the Carrier will attempt to reach an understanding with the General Chairman in conference, by telephone if necessary, and in each case confirm such conference in writing."

The Carrier is reminded that Supplement #3 is not intended to forfeit its right to contract out work. Both parties are fully aware that Supplement #3, Paragraph (c) requires advance notice in writing. From the record, it is apparent both parties gave lip service to those provisions. In the fact of such indifference on the part of the Organization, it is understandable how the Carrier inexorably moved to the belief its right of contracting out was unassailable. Notwithstanding, the language of Supplement #3 is clear and unambiguous. Clearly, the fact situation supports the conclusion that the Carrier violated the contracting out provision of the Agreement. In all fairness, this Board concludes that, if the Organization now chooses, after a long period of indifference, to strictly enforce the provision of Supplement #3, it should have put the Carrier on notice. It is indisputable the Agreement was violated. The disputed work is normally performed by the Organization. Given these circumstances and the mutual drift away from contract compliance, this Board is unable to conclude the monetary remedy demanded is appropriate.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest.


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1988.