

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Union Pacific Railroad Company

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

(1) The Agreement was violated when outside forces were used to lay carpet in 'Store 1' on December 1, 1984 (System File M-117/013-210-52).

(2) The Agreement was further violated when the Carrier did not give the General Chairman prior written notification of its plans to assign said work to outside forces.

(3) Because of the aforesaid violations, B&B Foreman R. T. Branting and Carpenters K. E. Boardman, J. D. Shepard and J. C. Wooten shall each be allowed pay at their respective straight time rates for an equal proportionate share of the forty-one (41) man-hours expended by outside forces in performing the work referred to in Part (1) hereof."

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 instant Claim rises as a result of Carrier's contracting out the work of installing carpeting at one of Carrier's office buildings in Omaha, Nebraska. Carrier failed to notify the General Chairman of its intention to contract out.

While we are of the opinion that there has been sufficient evidence that the work at issue is reserved to Claimants by contract and practice, we have generally taken the position that fully employed Claimants do not receive pay even when Carrier fails to notify the General Chairman of its intent to use outside forces, as was the situation in this instance.

We note, too, that there is some confusion in the record as to when the outside contractor, Ancona Brothers, performed the work in question. During the handling of this dispute on the property, the Organization alleged that the occurrence took place on December 8, 1984. Correspondence from the Carrier indicates that Carrier records showed that the work was performed on December 1, 1984. The Organization thereafter revised its Claim to reflect the date documented in Carrier records.

Accordingly, we now order that the matter be remanded to the parties for a determination as to when the incident in question occurred and whether Claimants were employed on that date. As noted above, if it is determined that Claimants were fully employed, no monetary remedy shall issue.

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 16th day of October 1990.