

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 28627
Docket No. MW-28773
90-3-89-3-163

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Elgin, Joliet and Eastern 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 pour concrete bases for boilers at the O&O Building in Joliet, Illinois on August 31, 1987 (System File BJ-10-87/UM-19-87).

(2) The Carrier also violated Rule 6(c) (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 violations referred to in Parts (1) and/or (2) above, Bridge and Building Carpenter Foreman J. Valek and Carpenters M. Bachmann and M. Clinton shall each be allowed eight (8) hours pay at their respective time and one-half 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.

The Claim submitted to this Board asserts a violation of both the Scope Rule and the notice requirements of Rule 6(c) (Article IV of the May 17, 1968 Agreement), as amended by a December 11, 1981 Letter of Agreement.

Rule 2 reserves certain work to employees represented by the Organization and it refers to concrete work. Rule 6(b) recognizes that construction projects of such magnitude and intricacy that cannot be performed by Carrier's employees may be performed by outside contractors.

The parties have devoted a significant amount of time arguing about reduction in employee ranks and full employment whereas the Carrier's rights in this case under Rule 2 must first be addressed. There are also assertions that certain documents have been delivered to the Board which were not handled on the property. We have confined our review solely to the appropriate documents of record.

The initial Claim (October 30, 1987) complained that an outside contractor poured concrete bases for boilers at the O & O Building, which work, according to the Organization, was historically and traditionally done by B & B carpenters. The Carrier responded by stating that it has the right to contract out work in various situations. The Organization disputed that Rule 6(b) applied in this case.

Unquestionably the Carrier has contracted out a number of projects, as shown in the record. Further, the Carrier contends that the work in question was merely a "minute part of the whole installation" and there were certain time constraints for accomplishing the heating system conversion. It concluded that there is no Agreement requirement to "piecemeal" the work, and the pouring of concrete is not exclusively reserved to B & B carpenters by practice or tradition. Examples were given.

In response, the Organization conceded that outside contractors have been used on occasion, but that B & B employees have been utilized in most concrete pouring.

The Organization has the burden of showing a violation of the basic Scope Rule. This record does not support that burden and we will deny the Claim in that regard.

As noted above, the Claim before this Board asserts a violation of Rule 6(c) which requires timely notification to the General Chairman in the event Carrier plans to contract out work within the scope of the Agreement. However, the initial Claim cited only Rule 2(a). The February 20, 1988 appeal also cited Rule 6(b). The June 13, 1988 appeal does not cite Rule 6(c) nor does the January 22, 1989 letter. On March 20, 1989, the Organization does state that "...the General Chairman should have been notified, so that We could place Our members in line for the work involved,..." But that statement is not sufficient to place Carrier on notice that there was an alleged Article 6(c) violation especially since prior correspondence had not raised the issue. Less than three weeks later the Organization advised the Third Division - the Board of intention to file an Ex Parte Submission.

We find that the notification portion of the Claim submitted to us was not handled and/or considered on the property and thus cannot be raised here in the first instance. On August 9, 1989, the Organization argued that the Carrier failed to raise on the property the fact that the Organization never asserted a violation of "Rule 6 - Contracting Out Work." The Carrier did respond to Rule 6(b) assertions and it was not required to respond to assertions of a Rule 6(c) violation because that issue was never raised.

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 17th day of December 1990.