

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29827
Docket No. MW-29651
93-3-90-3-653

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(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 assigned outside forces (Alliance Steel Construction, Inc.) to repair the Conveyor No. 4 structure at the Duluth Lakehead Storage Facility from July 26 through August 2, 1989 (Claim No. 28-89).
- (2) The Agreement was further violated when the Carrier failed to properly and timely notify the General Chairman in writing or afford him the opportunity to discuss this matter in conference prior to contracting out the work in Part (1) above.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, furloughed B&B Welders J. C. Lee, R. D. Haedrich, P. C. Jacobson and R. A. Struck shall each be allowed one hundred twenty-eight (128) hours of pay at the B&B welder's straight time rate and fifty (50) hours of pay at the B&B welder's time and one-half rate."

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 employe 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 Carrier and the Organization each have raised a timely objection to evidence offered de novo by the other in its submission. No de novo evidence will be considered by this Board. The Board's Findings are based solely upon the record established on the property.

The incident giving rise to this claim occurred at Carrier's facility known as the "Duluth Ore Docks" at Duluth, Minnesota. The taconite iron pellets stored at the docks are moved throughout the facility and onto ships primarily via a conveyor belt system. In mid-July 1989, Carrier discovered that the structural supports for Conveyor #4 had shifted, tearing the steel beams which support the conveyor, and rendering the conveyor unusable. On July 25, 1989, following discussion with a firm of consulting engineers, Carrier telephoned the Organization, confirmed by letter dated July 27, 1989, to inform him that Alliance Steel Construction would be employed for the necessary repairs. The contractor began work on July 26, 1989, and completed the repairs on August 2, 1989. In all, the contractor worked a total of 128 straight time and 50 overtime hours, while B&B forces worked a total of 239½ straight time and 57 overtime hours on the repair work.

On August 16, 1989 the Organization submitted a claim on behalf of four B&B Department employees, all of whom were furloughed at the time. The Organization alleged Carrier violations of Rules 1 (Scope), 26 (Classification of Work), and Supplement No. 3. (Contracting of Work). Supplement No. 3 reads in pertinent part as follows:

"(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.

.....(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 therefor, 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."

There is no support on the record before this Board for the Organization's claim that Carrier violated Rules 1 and 26 of the Agreement. Rule 1 lists the classes of employees covered by the Agreement, and makes no reference to the specific work performed by those employees. Rule 26 lists different classes of work for establishing rates of pay. It is well established through numerous Awards, however, that such a rule does not confer upon the unit employees exclusive title to the work cited. (See, Third Division Awards 29162, 29144, 27806, -- all on this property.) Moreover, there is no support on this record for the Organization's contention that the named Claimants possessed the requisite skills and abilities to perform the repairs at issue. (See Third Division Award 10310.)

With respect to Carrier's alleged violation of Supplement No. 3, Paragraph (c) clearly states that Carrier must notify the General Chairman in writing whenever work is to be contracted out except in emergency cases. To avoid being found in violation of Paragraph (c), if Carrier has failed to notify the General Chairman in writing, it must be prepared to show that: 1) an emergency situation existed; and 2) it complied with the last sentence of Paragraph (c) of Supplement No. 3 -- "In emergency cases...." Evidence on the record before the Board confirms that Carrier complied with the last sentence of Paragraph (c).

The remaining essential question is whether the situation actually constituted an emergency, or whether, as the Organization maintains, the "emergency" was simply a ruse for avoiding the written notification requirements in Paragraph (c) of Supplement No. 3. After careful consideration of the evidence presented on this record, the Board finds that the urgency and potential hazard of the required repairs constituted an emergency as contemplated by Paragraph (c) of Supplement No. 3. (See Third Division Award 20310.)

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Catherine Loughrin Interim Secretary to the Board

Dated at Chicago, Illinois, this 29th day of September 1993.