

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30966  
Docket No. MW-30014  
95-3-91-3-408

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  
(  
(Consolidated Rail Corporation

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

- (1) The Agreement was violated when the Carrier assigned or otherwise permitted outside forces (Barcia Brothers Fence Company) to install fencing around electrical and air power areas at Manville Yard, New Jersey, beginning January 29, 1990 and continuing through February 9, 1990 (System Docket MW-1212).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intention to contract out said work as required by the Scope Rule.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants E. Kalegi, P. Clark and R. Zerfuss shall each be allowed eighty (80) 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 employee or employees involved in this dispute are respectively carrier and employee 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.

By letter dated July 13, 1989, the Carrier wrote the Organization's General Chairman J. P. Cassese, Jr. that it intended to contract for improvements to Manville Yard, Manville, New Jersey, which involved grading, fencing, yard airlines and yard office building including associated utility services with the work beginning in early August, 1989 to be completed by August, 1990. The Organization's two other General Chairmen, J. Dodd and J. J. Davison, were sent copies of the notice.

By letter dated July 17, 1989 from General Chairman Cassese, the Organization stated that "as a matter of organizational policy, we are opposed to all contracting out of work. However, there are certain aspects of this request I would like to discuss with you." Cassese further stated in his letter that "I would appreciate your giving me a time and date when it is convenient to meet."

By letter dated July 25, 1989 from the Carrier to Cassese, a conversation of July 24, 1989 was confirmed setting a meeting for August 22, 1989.

By letter dated February 15, 1990, claim was filed for fencing work performed by Barcia Brothers Fence Company commencing January 29, 1990 at Manville Yard.

By letter dated April 9, 1990, the Carrier asserted that "Per Agreement between G. F. Bent, Senior Director - Labor Relations and J. Cassese, General Chairman, labor clearance was approved for fencing at Manville Yard."

In its appeal of April 16, 1990, the Organization argued that the Carrier "contacted the wrong General Chairman for labor clearance for this project. This property is former Lehigh Valley Railroad property which was solely worked by Penn Federation employees."

In a response dated October 30, 1990, the Carrier pointed out that the Manville Yard was not an exclusive Lehigh Valley facility but was a joint facility of the former Reading Railroad and the former Central Railroad of New Jersey as well as the Lehigh Valley and that employees on the former Reading and CNJ were represented by what is now the Consolidated Federation and the involved General Chairman was given notification of the contracting and met and discussed the matter. In that letter, the Carrier also pointed out that a copy of the notice of contracting was sent to the other involved General Chairman and no action was taken by that individual.

The Scope Rule states that "In the event the Company plans to contract out work within the scope of this Agreement ... the Company shall notify the General Chairman involved, in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than fifteen (15) days prior thereto." Assuming that the Carrier sent notice to the wrong General Chairman, nothing in this record shows that such action was taken in bad faith in an attempt to mislead the Organization. In any event, the correct General Chairman was timely notified. A copy of the Carrier's July 13, 1989 notice was sent to the other two General Chairmen and no action was taken by those individuals. Under the circumstances, the Organization cannot now claim that it did not receive proper notification. Because all of the potentially affected General Chairmen received copies of the notice, and because no action was taken by the other General Chairman the Organization now claims was entitled to notice upon his receipt of the notice to indicate a protest of the contracting action, the Organization is estopped from raising an argument that the proper General Chairman was not notified. See generally, Third Division Award 29915.

Thus, with the Organization estopped from claiming that the wrong General Chairman was notified, all that remains is the evidence that after timely notification and conference as a result of the Carrier's original notice, "labor clearance" was obtained for the contracting out of the fence work. We can go no further.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of July 1995.