

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31031
Docket No. MW-30203
95-3-91-3-653

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
(Union Pacific Railroad Company

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

- (1) The Agreement was violated when the Carrier assigned outside forces (Chief Construction Company) to perform roofing work on the Material Handling Facility in Grand Island, Nebraska from July 23 through July 30, 1990 (System File S-367/900629).
- (2) The Agreement was further violated when the Carrier did not afford the General Chairman a meeting to discuss the work referred to in Part (1) prior to the contracting out of said work as contemplated by Rule 52(a).
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, B&B Carpenters D. M. Eckart, W. J. Harris, D. T. McIntosh and I. Espinosa shall each be allowed an equal proportionate share of the total number of man-hours worked by the outside contracting force from July 23 through July 30, 1990."

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 3, 1990, the Carrier advised the Organization of its intent to contract out certain roofing work at the Carrier's Materials facility in Grand Island, Nebraska. By letter dated July 9, 1990, the Organization responded that it disputed the Carrier's right to contract out the work and requested that a conference be scheduled and held prior to the work being assigned to and performed by the contractor. By letter dated July 23, 1990, the Carrier indicated its willingness to meet in conference. The parties met on August 9, 1990 without resolution.

The work was performed by Chief Construction Company from July 23 through July 30, 1990.

Rule 52 provides in pertinent part:

"... In the event the Company plans to contract out work because of one of the criteria described herein, it shall notify the General Chairman of the Organization 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, except in "emergency time requirements" cases.

If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the carrier shall promptly meet with him for that purpose. Said carrier and organization representatives shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached the carrier may nevertheless proceed with said contracting, and the organization may file and progress claims in connection therewith."

We are not satisfied that the Carrier met its notice obligations under Rule 52. While the Carrier gave the Organization notice on July 3, 1990 of its intent to contract out work, on July 9, 1990 the Organization requested a conference prior to the work being assigned to and performed by the contractor. Under Rule 52, at that point, the Carrier was obligated to "promptly meet". Instead of meeting prior to the date the work was to begin (or at least indicating a willingness to do so or indicating that the work was going to commence in short order), on the day the work began (July 23, 1990), the Carrier wrote the Organization that it was willing to meet. When the parties finally met on August 9, 1993, the work had been started and completed. Given the scenario in this case, not much could be accomplished in a conference under Rule 52.

In a similar circumstance this Board sustained the Organization's claim. See Third Division Award 30823. In that case, when the Organization responded to the Carrier's notice of intent to contract certain work by requesting a conference "prior to the work being assigned to and performed by a contractor" this Board found an obligation by the Carrier to "promptly meet" with the General Chairman (regardless of whether the Carrier believed it had the authority to contract the work under the provision mentioned in its letter). As a remedy, "and without regard to what may be the underlying merits", a full sustaining award was entered which was "not barred by the fact that the Claimant was otherwise employed during the claim period."

While we agree that a sustaining award is proper in this case because of the Carrier's failure to comply with Rule 52, we do not believe that compensation should be required for employees who were not on furlough. A distinguishing factor in this case from the facts in Award 30823 is that in Award 30823 after the Organization requested a conference, the Carrier wrote another letter stating that it was reevaluating its position and that it was possible that Carrier forces would do the work requesting that the matter be held "for further review in conference". Then, without any further notice to the Organization prior to a conference, the work was contracted out with the work beginning prior to the conference. This Board stated that the Carrier's request to hold the matter until conference "obviously added to the Carrier's responsibility to meet with the General Chairman prior to any possible contracting."

In this case the Organization was not walked down the primrose path as it apparently had been in Award 30823. Under these circumstances, and because of the type of relief awarded in these cases on this property, we believe that monetary relief, if any, shall be limited to situations where Claimants were on furlough.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of September 1995.