

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31597  
Docket No. MW-30814  
96-3-92-3-623**

**The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.**

**(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE:  
(CSX Transportation, Inc. (former Louisville  
( and Nashville 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 (Dillard Contractors) to build forms, tie steel and pour concrete for a retaining wall and fuel tank at Radnor Yard, Nashville, Tennessee on March 1, 4, 5, 7, 8, 11, 12, 13, 14, 15, 18, 19, 22, 25, 26, 27, 28, 29, April 1, 2, 3, 4 and 5, 1991 and continuing [System File 10(44)(91)/12(91-1132) LNR].**
- (2) The Agreement was further violated when the Carrier failed to notify the General Chairman of its intent to contract out said work in accordance with Article IV of the May 17, 1968 National Agreement.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, B&B employees R. D. Nicholas, S. J. Smith, R. W. DeLoach and G. C. Stroud shall each be allowed eight (8) hours of pay at their respective straight time rates and one (1) hour of pay at their respective time and one-half rates of pay for each of the claim dates listed in Part (1) above and continuing until the project was completed."**

**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.

Claimants are regularly assigned to positions within the B&B Subdepartment, and were working as such at the time this issue arose. Prior to the instant dispute, Claimants were advised that they would be assigned to construct a concrete cradle for an oil storage tank at Radnor Yard, Nashville, Tennessee. In connection with the assignment, Claimants were furnished with a set of engineering drawings depicting the work to be done. However, Carrier contracted with Dillard Contractors to set forms and pour concrete in connection with the construction of the concrete tank cradle.

On April 11, 1991, the Organization submitted a claim alleging Carrier had violated Rules 1, 3 and 41 of the Agreement, in addition to Article IV of the 1968 National Agreement when it contracted out work "reserved" to B&B forces. The Organization premised its claim upon the fact that Claimants had performed the same work in the past, noting that "the very same type of tank was installed and is still there today beside the boiler house at Radnor Yard." The General Chairman went on to note that Carrier had failed to confer with the Organization at least 15 days prior to the onset of the work at issue, further asserting that Carrier did not make a "reasonable effort" to use MofW forces as outlined in Appendix J.

In its denial, Carrier maintained that on December 13, 1991, the Organization was notified of Carrier's intent to contract the work, "exercising its options" under Rule 2 of the Agreement.

The General Chairman replied to Carrier's denial stating:

"I beg to differ with Mr. Pettry and Mr. Sweatt, account it was the Organization that 'called' Mr. Sweatt concerning these contractors, once I was informed by the Local Chairman. In fact, not only did we discuss the contractors performing B&B work, but also contractors performing track subdepartment work. Also the fact that some B&B employees had received cut-off notices. I was informed by Mr. Sweatt that he would check into this matter and get back to me. As you can see, it was not the Company notifying the Organization, but the Organization notifying the Company."

Although the Organization did not allege any violation of Rule 2, it did claim that Carrier had violated Rule 41(a) and (e) of the Agreement, in addition to "two National Agreements." It is noted that Carrier initially assigned the work to Agreement-covered employees, thus obviating any argument about the ability of employees represented by the Organization to do such work and reinforcing the Organization's argument that B&B forces regularly did such work. Additionally, we found persuasive the Organization's offer of proof with respect to similar work which it had previously performed at another location.

Article IV of the 1968 National Agreement stipulates that Carrier must inform the General Chairman, "in writing," of its intent to contract out work. In this instance, the record establishes that Carrier failed to do so. Based on those facts, this claim must be sustained. See also Third Division Award 31479.

### AWARD

**Claim sustained.**

**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.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

**Dated at Chicago, Illinois, this 29th day of August 1996.**