

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31777
Docket No. MW-30407
96-3-92-3-149**

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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 Carrier violated the Agreement when it assigned outside forces (Dugger & Dugger Contractors) to perform Bridge and Building Subdepartment work (set forms and pour concrete) at the northwest end of the Round House at Radnor Yards, Nashville, Tennessee on December 21, 26, 27 and 28, 1990 [System File 11(5) (91)/12(91-422) LNR].

(2) The Carrier further violated the Agreement when it failed to give the General Chairman fifteen (15) days' advance written notice of its intent to contract out the work as required by 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, Claimants G. C. Stroud, C. Gay and R. C. Robinson shall each be allowed eight (8) hours' pay at their respective straight time rates of pay for each day worked by the outside contractor.”

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 were given due notice of hearing thereon.

There is no dispute that the Carrier assigned outside forces to set forms and pour concrete at Radnor Yards, Nashville on December 21, 26, 27, and 28, 1990. While there is a disagreement as to whether the General Chairman was orally notified in advance of this contracting, no dispute exists as to the Carrier's failure to provide advance notification to the General Chairman in writing, as required by Article IV of the May 17, 1968 Agreement.

Third Division Awards 30977 and 31597, involving the same parties, cover virtually identical issues and sustained the Organization's claims. Third Division Award 30977, also involving the same parties, concerns a different type of project (installing and repairing doors instead of pouring concrete). The issues, however, are the same as those under review here. Award 30977 states as follows:

"Due to Carrier's failure to afford the Organization 15 days notice and opportunity for discussion, . . . these claims will be sustained. B&B Mechanics worked on these doors in the past and had a colorable claim to the work,"

In this instance, Awards 30977 and 31597 demonstrate that the Claimants had even more than a "colorable claim" to the concrete work. The Carrier's reference to the Organization's need to prove its "exclusive" right to the work has been repeatedly found inappropriate in reference to contracting claims; further, as pointed out by the Organization, there is no record of this issue being raised on the property.

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 20th day of November 1996.