

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38042
Docket No. MW-37159
06-3-02-3-142

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(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 (Horrsburgh & Scott Company) to perform Maintenance of Way Bridge and Building Sub-department work (repair gear reducer on main conveyors) at the two Harbors Ore Storage Facility instead of Messrs. P. Iverson and S. Knutie (Claim No. 40-00).
- (2) The Carrier further violated the Agreement when it failed to notify and confer with the General Chairman concerning its intent to contract out the above-referenced work as required by Supplement No. 3.
- (3) As a consequence of the violation referred to in Parts (1) and/or (2) above, Claimants P. Iverson and S. Knutie shall now be compensated for the total number of man-hours expended by the outside forces in the performance of said work at their respective straight time rates of pay.”

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.

The Organization asserts that the work of rebuilding reducers for the main conveyors at Two Harbors Storage Facility was, without any notice whatsoever, sent out to Horrsburgh & Scott to be rebuilt. This work belonged to and had been historically performed by B&B Department personnel. The Organization points to a violation of Supplements 3, 9 and 38 and requests compensation for the Claimants.

The Carrier argued that it did not violate the Agreement by sending the parts out to be rebuilt. It noted that notice was not required, pointing to on-property Third Division Award 29162. It further argued that this work dealt with two damaged gears on a 20 year old reducer; the high-speed and low speed gears on adjacent shafts. It argues, in pertinent part, that BMW-represented employees have:

“ . . . never rebuilt an entire reduction gear assembly to original specifications . . . They do not have the ability to determine whether mating gears are within tolerance, nor . . . determine compatibility between existing and rebuilt or new gears . . . properly check or qualify bore alignment, much less re-bore to correct any misalignment . . . ”

The outside company had the expertise and would guarantee the work. The Carrier argued that it had done this in the past, it was not the exclusive work of BMW-represented employees, and it was not covered by the Agreement.

The Board notes that Supplement 3 states, in pertinent part, that:

“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 . . . 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 therefore, and afford the General Chairman the opportunity of discussing the matter in conference with Carrier representatives."

The discussion on the property as to whether this was or was not Maintenance of Way and Structures Department work has been studied by the Board. The Organization argued that it was scope covered work. The Carrier argued that it was not work exclusive to B&B forces, as Supplement No. 9 did not apply and "is not to be interpreted as granting exclusive rights to work or infringing on any work rights belonging to other crafts."

The specific work disputed involve the repair of two of three shafts (the damaged high and low speed gears on a gear reducer) off Conveyor System No. 7 (south side) from the Two Harbors Storage Facility. Supplement No. 9 involves jurisdiction of work between Maintenance of Way and Ore Dock employees. It clearly specifies four areas in which Ore Dock employees have jurisdiction. It states:

"Bridge and Building Department employees

1. Maintenance and repair of conveyor systems and equipment not specifically listed for ore dock employees above."

The work herein disputed was not specifically listed for Ore Dock employees. It involved the maintenance and repair of conveyor systems and equipment. The Organization provided signed statements asserting that the work had been "normal and customary" work performed by B&B employees for 20 years. While the Carrier points to Third Division Award 29162, that Award involved the installation of window shades in the cabs of a conveyor without advance notice and the lack of a prima facie case that the work belonged to BMW-represented employees. This work is clearly listed in Supplement No. 9 and the Organization made a prima facie case that the work belongs to BMW-represented employees.

The Carrier's argument of a lack of employee ability should have been discussed in conference following a Carrier notice of intent. The fact of a guarantee of the work is irrelevant as there is no language permitting the outside contractor to perform employee work if a guarantee is provided. Similarly, the Carrier's

exclusivity argument does not apply, because this dispute is not between crafts, but rather involves an outside contractor (Third Division Awards 30182, 30964, and 31599).

The Board finds that the Carrier's arguments are not persuasive. The Organization has shown that the work belongs to BMW-represented employees. The positions taken by the Carrier should have been argued after providing notice and conferencing with the Organization. The Carrier's failure to do so, as required by Supplement No. 3, entitles the Claimants to compensation. The Carrier's arguments that the employees were fully employed, that there was no loss of work opportunity and that the remedy requested is excessive are rejected. The facts of this case reveal that the work was performed by the outside manufacturer and, therefore, there was a loss of work opportunity (Third Division Awards 30943, 31260, 37471, and 37599). The claim is sustained.

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 21st day of December 2006.