Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38151
Docket No. MW-37501
07-3-02-3-585

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(CP Rail System (former Delaware and Hudson
(Railway Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned outside forces (Trombly Contracting) to perform Maintenance of Way work (dig out clay, install rip-rap and related bank repair work) at Mile Post "A 124.5 on the Canadian Main Line on July 25, 26 and 27, 2001, instead of B&B employes E. Woodruff, W. Barcomb, A. Mosely, K. Sweatt, K. Bigelow and L. Terrell (Carrier's File 8-00213 DHR).

(2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper advance written notice of its intention to contract out the aforesaid work or make a good-faith effort to reduce the incidence of subcontracting and increase the use of its Maintenance of Way forces as required by Rule 1 and Appendix H.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants E. Woodruff, W. Barcomb, A. Mosely and K. Sweatt shall now each be compensated for twenty-four (24) hours' pay at their respective straight time rates of pay and four (4) hours' pay at their respective time and one-half rates of pay and Claimants K. Bigelow and L. Terrell

shall now each be compensated for eight (8) hours' pay at their respective straight time rates of pay and two (2) hours' pay at their respective time and one-half 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.

In a memorandum dated February 2, 2001, the Carrier notified the Organization's General Chairman of its intention to contract out certain projects in the coming year, if and when the Carrier found it lacked sufficient qualified supervisory personnel and/or available employees. The Carrier listed the prospective projects on the second and third pages of the memorandum. On March 14, 2001, the Carrier sent a letter to the General Chairman regarding its intention to contract out some of the work on a new siding not mentioned in the February 2, 2001 memorandum. At the end of each of these notices, the Carrier stated, in words or substance, that the Organization should "feel free to contact [the Carrier]" if it wished to discuss the notices and/or arrange a meeting between the Carrier and the Organization.

On March 20 and March 30, 2001, the Organization sent the Carrier letters expressing its concern over the work to be contracted out. In each letter, the Organization acknowledged that discussions regarding the work in question had taken place. It further noted that it had protested the contracting out of the actual work and suggested that the Carrier lease the necessary equipment and allow BMWE-represented employees to operate it.

On August 15, 2001, the Organization filed the above claim on behalf of the six mentioned employees. It alleged that outside contractors had performed BMWE scope covered work, in violation of the Parties' Agreement. Specifically, the claim alleged,

> "The . . . Contractor engaged in digging out the clay, installing rip-rap and reestablishing the contour of the bank. . . .
>
> The above-mentioned work has long been the work of the B&B department with help from the track gangs. The Carrier violated Rule 1, Rule 3, Rule 11, and Appendix "H", Letters of Understanding re Contracting Out."

In its denial of the Organization's claim, the Carrier pointed out that the work at issue was contained in the original notice to the Organization on February 2, 2001, and contended that the Organization had thus been properly notified. The Organization appealed the denial on December 12, 2001. That appeal was denied. In its denial, the Carrier reaffirmed its position that the Organization had received proper notice of the work to be performed and that, at the Organization's request, the Parties had discussed the work to be contracted out.

A review of the record indicates that the Carrier did, in fact, give the Organization ample notice of the specific work to be performed. Moreover, in its first claim letter the Organization acknowledged that the matter had been discussed. There is no mandate in the contract language cited that, after the required discussion opportunity, the Parties' have to agree on the contracting out (or not) of the work at issue. Further, there is no indication in the record that either the Carrier's notice to the Organization or its participation in subsequent discussions regarding contracting out was on any basis other than good faith.

Thus we do not find that any provision of the Agreement was violated in this instance. Accordingly, the claim must be denied in its entirety.

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 23rd day of April 2007.