

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39865
Docket No. MW-38986
09-3-NRAB-00003-050456
(05-3-456)

The Third Division consisted of the regular members and in addition Referee Brian Clauss when award was rendered.

(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference

PARTIES TO DISPUTE: (

(BNSF Railway Company (former St. Louis -
(San Francisco 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 (Kevin Mitchell) to perform Maintenance of Way work (remove snow and spread salt) at the Tennessee Yard on the Springfield South Division on February 6, 2002 instead of Messrs. J. Hall, J. Mitchell and J. McCallum. [System File B-2873-2/12-02-0051 (MW) SLF]**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with a proper notice of its intent to contract out said 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 99 and December 11, 1981 Letter of Agreement.**
- (3) As a consequence of the violation referred to in Parts (1) and/or (2) above, Claimants J. Hall and J. McCallum shall now each be compensated for ten (10) hours at the S.E.O. rate of pay and Claimant J. Mitchell shall now be compensated for ten (10) hours at the foreman’s rate 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 claims that the Carrier violated the Agreement when it used a contractor for snow removal work from Midnight to 10:00 A.M. on February 6, 2002. Initially, the Carrier argues a procedural point - that the claim should be dismissed or at least denied in part because the claim presented to the Board is materially different than the claim presented to the Carrier on the property. Specifically, the Carrier contends that the allegation of improper notice of subcontracting was not included in the original claim. The Organization counters that the Carrier was on notice through citation to the applicable Rules violated.

The original claim was presented in a letter dated March 8, 2002, which provided in pertinent part:

“This office has received a complaint from [Claimants] that their seniority was not respected when a contractor was used to do their work.

On February 6, 2002, the carrier had contractor Kevin Mitchell clean out snow and spread salt at the Tennessee Yard, Springfield South Division. The contractor used two (2) backhoes and a foreman doing this work from midnight until 10:00 am.

Therefore as the carrier did not comply with Rules 2, 3 and 4 of the March 1, 1951 Agreement or Rules 2, 3, 4, 31, 32, 33, 42, 76, 79 and 99 of the August 1, 1975 Agreement or the May 17, 1968 and December 11, 1981 Agreement, we request that [Claimants] . . . be paid.”

The Board reviewed the presented claim before the Board and the claim presented on the property. The Board notes that the purpose of a claim is to apprise the Carrier of the nature of the matter with sufficient specificity so that the Carrier can reply.

Here, the claim presented on the property claims a violation of seniority when a contractor was used for snow and salt work. There is no mention of improper notice of subcontracting. The claim letter contained a number of Rule numbers and Agreements. However, a general recitation of numerous Rule numbers and Agreements, absent more, is insufficient to place the Carrier on notice that an allegation of improper subcontracting notice was part of the claim.

There is a material difference in these two claims and the additional portions of the claim presented to the Board, and not presented in the original claim on the property, will be disregarded.

On the merits, the Organization maintains that the test in a subcontracting matter is not “exclusivity” as that inquiry is reserved for intra-craft disputes. The Carrier counters that snow removal and salting is not reserved to the Claimants. Rather, there is a long practice on the property that snow removal is divided between many crafts and contractors. The Organization cannot show that the work is reserved and there is no evidence to support the Organization’s position.

The Board carefully reviewed the evidence. It is axiomatic that the burden is on the Organization to establish a violation of the Agreement. The Carrier asserts that there is a long practice on the property that snow removal is divided between many crafts and contractors

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The evidence offered by the Organization is insufficient to establish a violation of the Agreement. Accordingly, the claim is denied.

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 31st day of July 2009.