

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42885
Docket No. MW-43673
18-3-NRAB-00003-160460**

The Third Division consisted of the regular members and in addition Referee I. B. Helburn when award was rendered.

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

PARTIES TO DISPUTE: (
(Springfield Terminal 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 to perform Maintenance of Way work (rebuilding transfer table) in Waterville, Maine beginning November 21, 2014 and continuing, and failed to comply with the terms of the understanding reached by the parties at the October 14, 2014 Article 3.2 conference, wherein it was agreed that the Carrier would not engage in furloughs or reduction of B&B forces while outside forces remained on the property (Carrier’s File MW-15-19 STR).**
- (2) As a consequence of the violations referred to in Part (1) above, Claimants K. Finemore, M. Brann, N. Tibbetts, P. Rancourt and D. Dietterich were furloughed, and must now each be compensated for \$3,677.76 in connection with the dates of November 24, 2014 through December 19, 2014. Each Claimant must also be compensated for any dates subsequent to December 19, 2014 where the outside forces were assigned to the project while the claimants remained furloughed. Lastly, each Claimant must also be compensated holiday pay for Christmas Eve, Christmas Day, New Year’s Eve and New Year’s Day which they also lost because of the Carrier’s violation of the Article 3.2 understanding.”**

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 Claimants held seniority as Bridge & Building (B&B) Mechanics within the B&B Sub-Department. A Letter of Understanding memorialized the Organization's agreement that the Carrier could subcontract some work involved in rebuilding a transfer table in Waterville, ME but the Carrier would not furlough or reduce B&B forces while the subcontracting work was in process. Nevertheless, the Carrier abolished the Claimants' positions and furloughed them while the subcontracted work was in process. Therefore, a timely claim was filed.

The Organization contends that the Carrier violated the October 15, 2014 Letter of Understanding when it furloughed the Claimants while the subcontractor was on the property. The Carrier's defense that the furloughs occurred because the expected time frame for the subcontracted work was extended is without merit because the contract and the Letter are clear. The appropriate remedy is to pay the Claimants for the hours worked by the subcontractor.

The Carrier insists that the Organization has not proven the claim by substantial evidence. The Carrier's good faith estimate of the time frame involved for the work led to the indication that the Carrier would maintain employment while the contractor was on the property, but the work took longer than necessary and therefore the Claimants were furloughed. The work was beyond the regular scope performed by Carrier employees and was not required to be done piecemeal. Claimant Dietterich was on approved FMLA on November 11, 2014 and Claimant Braun worked until November 25, 2014. With no basis for the claim, there is no basis for damages.

In essence, this dispute involves a negotiation “gone bad,” although the Board finds that both parties acted in good faith. Briefly, the Carrier determined that the work of completely rebuilding a transfer table in Waterville, ME was “beyond the Carrier’s typical scope of work and technical ability” and thus “certain aspects of concrete work” needed to be contracted out. The Carrier communicated in writing to the Organization, including the statement that “the five (5) B&B employees in Waterville . . . will be working at all times while the contractor is on the property.” The Organization responded in writing, including the statement that “given that the Carrier has further committed that during such time, it will not engage in any furloughs or reduction of B&B Forces during the duration of this project, . . . the Organization is agreeable to the Carrier’s desire to subcontract this project.”

The Carrier did not simply “indicate” that it would maintain employment while the contractor was on the property, it committed to maintaining employment while the contractor was on the property. The commitment was not based on a specific time frame in terms of days or weeks, although two weeks was estimated, and it did not include a statement of “wiggle room” in case the estimate was faulty, which it ultimately proved to be. Just as this Board would not add to, subtract from or modify the negotiated Agreement between the parties, it will not modify the parties’ agreement pertaining to the Waterville transfer table. Therefore, the claim is sustained.

The Carrier’s submission indicates that Claimants Dietterich and Brann should not receive the same amount of compensation as the other Claimants. The Board instructs that Claimants are to be made whole, but are not to receive a windfall. Claimants are not to be compensated for time(s) when they were unavailable for work or being compensated by other entities. Thus, the Board remands the dispute to the parties to determine the proper compensation for each Claimant.

AWARD

Claim sustained.

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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 10th day of January 2018.