

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6594

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BNSF RAILWAY COMPANY

)
) Case No. 3
)
) Award No. 3
)

Martin H. Malin, Chairman & Neutral Member
R. C. Robinson, Employee Member
W. A. Osborn, Carrier Member

Hearing Date: June 21, 2004

STATEMENT OF CLAIM:

1. The Carrier violated Article XV of the September 26, 1996 National Agreement when it contracted out the work of installing piling at Hobson Yards in Lincoln , Nebraska beginning June 30, 1998 and failed to afford furloughed employee L. J. Anderson the level of protection which New York Dock provides for a dismissed employee (System File C-97-C100-110/MWA97-12-18AA BNR).
2. As a consequence of the aforesaid violation, Mr. L. J. Anderson shall be afforded the level of protection which New York Dock provides for a dismissed employee beginning June 30, 1998 and continuing until the violation was corrected.

FINDINGS:

Public Law Board No. 6594, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

As with the claim before the Board in Case No. 1, Award No. 1, the instant claim arises under Article XV, Section 1 of the September 26, 1995, National Agreement. For purposes of brevity, we will not reproduce the analysis and interpretation of Article XV, Section 1 from Award No. 1. Rather, we hereby incorporate it by reference.

In accordance with Award No. 1, we find that the Organization proved that Carrier engaged in increased subcontracting. We further find that merely because Claimant's furlough occurred prior to the contracting at issue, this does not per se mean that the Organization cannot prove that Claimant's furloughed status was the direct result of the increased subcontracting.

The circumstances presented in the instant case, however, are different from those presented in Awards Nos. 1 and 2. In the instant case, Claimant's job was abolished and he went on furloughed status one and a half years prior to the contracting at issue. When he was recalled to work on October 1, 1998, he declined to return and was terminated. Prior to the contracting at issue, Claimant had the opportunity to bid on welding vacancies and declined to do so, even though employees junior to him who also lacked welder seniority did bid on and were assigned the positions. Had Claimant bid on those positions, he would not have been in furloughed status when the increased contracting occurred. Claimant's furloughed status appears to have been the result of his own choices. Accordingly, we conclude that the Organization has failed to prove that Claimant's furloughed status was a direct result of the increased subcontracting.

AWARD

Claim denied.



Martin H. Malin, Chairman



W. A. Osborn
Carrier Member



R. C. Robinson
Employee Member

Dated at Chicago, Illinois, September 30, 2009