Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12817
Docket No. 12713
95-2-93-2-117

The Second Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers' International
(Association
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(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

"1. That the Norfolk and Western Railway Company, hereafter referred to as the Carrier, violated the controlling agreement dated September 25, 1964 as modified by the agreement dated September 4, 1978, Article 2, Section 1 and 2, as well as the agreement effective June 1, 1939 as subsequently amended and specifically Rules 93 and 94 of the Current Agreement, and Rule 2 of the Wabash Water Service Agreement of 1-26-62.

Carrier did enter into an agreement with Natkin Service Company of Kansas City, for the purpose of installing a new thermostat and thern at the N&W Inn on 3-14-90. The man hours involved in this violation were as follows: 1 man @ 4-1/2 hours. This work as of a type and nature which the Sheet Metal Workers employed at Kansas City do and have done in the past. The same of which Carrier was informed by claim letter dated 4-2-90. Exhibit 'A'.

2. That accordingly, the Carrier be ordered to compensate the following Sheet Metal Worker for the total number of man hours (4-1/2) involved in the contracting of this work: Mr. F.C. Morgan, Jr., and that Mr. Morgan be additionally compensated ten percent (10%) of the total hours as provided for by the Agreement as amended, for the Carrier's violation of the advance notice requirement of Article 10 of the December 4, 1978 Agreement."

FINDINGS:

The Second 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 waived right of appearance at hearing thereon.

There is no disagreement on the underlying facts of this dispute. At Carrier's Kansas City, Missouri, terminal, the Claimant named herein was employed as a Water Service Maintainer. As such, he was subject to the Sheet Metal Workers' International Union rules agreement. On the date indicated in the claim, Claimant performed his assigned duties and was compensated for all services performed at his regular rate of pay.

The parties acknowledge that on the March 14, 1990, claim date an outside contractor was utilized to perform the work which is set forth in the Statement of Claim. There is no disagreement relative to either the fact that such work was performed or to the amount of time consumed or the amount of money involved in the performance of the work.

The disagreement between the parties began on April 2, 1990, when the Organization initiated the claim here in dispute by alleging a "violation of Article 2, Section 1 and 2 of the September 25, 1964 Agreement . . . ." The dispute was handled in the usual manner on the property and, failing to reach a satisfactory resolution thereon, the Organization by letter dated January 9, 1991, initiated action to submit the dispute to Special Board of Adjustment No. 570 which was the vehicle created by the provisions of the September 25, 1964 Agreement for final resolution of such disputes.

The dispute was still pending with SBA No. 570 when on June 1, 1993, the parties at the National Level agreed that disputes of this type which had not been assigned to and argued before a Referee at SBA No. 570 could "be withdrawn by either party at any time prior to August 1, 1993." This Agreement provided that written notice of such withdrawal "shall" be given to all parties to the dispute including SBA No. 570 "at least fifteen (15) days in advance." The Agreement went on to allow that "a dispute withdrawn pursuant to this paragraph may be refered to any boards available under Section 3 of the RLA . . ." (underscore ours for emphasis).

The Organization, by letter dated June 22, 1993, informed all parties of its intent to withdraw this dispute from SBA No. 570. Subsequently, by letter dated June 28, 1993, the Organization filed a notice of intent to file an ex-parte submission to the Second Division of the National Railroad Adjustment Board in connection with this dispute. Thereupon, the Carrier by letter dated June 29, 1993, took exception to the Organization's actions and contended that they (Carrier) wished to move the dispute to an existing on-property Public Law Board rather than to the NRAB where, according to the Carrier, the dispute would "be dumped back into the already overcrowded dockets of the NRAB, where they will languish a great deal longer before they are resolved." The Carrier voiced similar objections on this subject to the Executive Secretary - Second Division. Nonetheless, the Carrier eventually filed their ex-parte submission with the Second Division.

As a threshold argument, Carrier contended that this Board lacks jurisdiction to hear and decide this dispute because "the SMWIA did not comply with the 15 day advance notice requirement required by the June 1, 1993 NRLC/SMWIA Agreement" and therefore this dispute was not properly withdrawn from SBA No. 570 and should be summarily dismissed by this Board.

This Board has difficulty understanding the logic of Carrier's argument in this regard. The June 1, 1993 Letter of Agreement gave either party to a dispute pending before SBA No. 570 until August 1, 1993, the right to withdraw such cases from SBA No. 570 and gave either party the right to refer such cases "to any boards available under Section 3 of the RLA . . . ." Clearly this Board is a "board available under Section 3 of the RLA." The Letter of Agreement did not require that there must be mutuality of agreement between the parties relative to which Section 3 RLA Board would be used to refer cases withdrawn from SBA No. 570. Carrier's argument here concerns its anxiety relative to this case being "dumped back into the already overcrowded dockets of the NRAB, where they (it) will languish a great deal longer before they (it) are (is) resolved." Having stated this anxiety, Carrier then demands that the case be dismissed by this Board without consideration of the merits which would, in effect, place the dispute back within the authority of SBA No. 570 where it would again languish without resolution as it had previously.

It is this Board's opinion that the Organization exercised their initiative under the June 1, 1993 Letter of Agreement and gave proper notice to all parties concerned of their intent to withdraw this dispute from SBA No. 570. The fact that they did not wait a full fifteen days following their notice of intent to withdraw from SBA No. 570 before they initiated action to place the dispute before this Board does not, in our opinion, either violate the spirit and intent of the June 1, 1993 Letter of Agreement or negate this Section 3 RLA Board's jurisdiction to review the merits of the dispute. This we will do and thereby eliminate any languishing of this issue.

On the merits, the Organization argued that the work which was performed by the outside contractor in this instance was work which, they say, was specifically covered by the Organization's Classification of Work Rule. Therefore, they contend, Carrier was obligated by the language of Article II - SUBCONTRACTING of the September 25, 1964 Agreement to give the Organization a notice of intent to contract out this work and to justify such action under the guidelines set forth in Section 1 of Article II. The Organization further argued before the Board that "the employes at Kansas City have always maintained the HVAC systems at the N&W Inn and have over the years replaced and installed the very same type of thermostats."

For their part, the Carrier both on the property and before this Board argued that the work in question is not, either by explicit agreement language or by implication, included or referenced in the Classification of Work Rule. Carrier during the on-property handling of the dispute presented to the Organization several exhibits which, they say, supports their position relative to the use of outside contractors to perform this type of work and in support of their position that the employes represented by the Organization have not historically performed such work to the exclusion of all others.

Before the Board addresses the dispositive issues of this case, there is one ancillary, non-dispositive issue present in this case which the Board feels compelled to address. During the on-property handling of the dispute, Carrier presented to the Organization nineteen (19) separate photocopies of statements in support of their contention relative to the use of outside contractors to the exclusion of their own employes to perform work similar to that here in dispute. For the first time before this Board, the Organization voiced concern relative to the quality of the photocopies. Upon review of these photocopies by the Board, we are inclined to agree with the Organization's concern.

If any party to a dispute before this or any other Section 3 RLA Board wishes to have the Board give serious attention to and consideration of the exhibits which they present to the Board in support of their respective positions and arguments, they MUST insure that the copies submitted are legible, clear, easily readable and are pertinent to the issue under consideration.

Having said that and from our review of the case record as it was developed during the on-property handling of this case, the Board is convinced that the Classification of Work Rule here involved does not confer or vest within the Claimant an exclusive or contractual right to perform the work here in dispute. The Organization made no apparent effort during the on-property handling of this dispute to either disprove Carrier's contentions relative to the somewhat extensive use of outside contractors to perform similar work or to substantiate their own claim to the disputed work by probative evidence. It is well established that unsupported statements and contentions - without more - is of no evidentiary value. The burden of proof is on the one making the claim or contention. Mere words alleging that a violation has occurred are not proof. Inasmuch as it is the Board's conclusion that the work involved in this case was not reserved to the Claimant by either the language of the Classification of Work Rule or by historic performance by the Claimant or other employes, the advance notice provisions of Article II of the September 25, 1964 Agreement, as amended, were not violated.

AWARD

Claim denied.

O R D E R

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 Second Division

Dated at Chicago, Illinois, this 26th day of January 1995.