

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23578
Docket Number MW-23833

John B. LaRocco, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Union Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when outside forces were used to construct 'signal mounds' west of Laramie, Wyoming on the Wyoming Division (Carrier's File 013-210-52).

(2) The Agreement was further violated when the Carrier did not give the General Chairman prior written notification of its plan to assign said work to outside forces.

(3) Because of the aforesaid violations, all roadway equipment operators, holding seniority as such on the Wyoming Division during the claim period, each be allowed pay at their respective rates for an equal proportionate share of the total number of man-hours expended by outside forces retroactive sixty (60) days from August 25, 1979."

OPINION OF BOARD: In this case, the Carrier has frankly admitted that it failed to give the Organization notice (as required by Rule 52) of its intent to contract out work involving the construction of signal mounds. The Organization urges us to award the claimants (who are members of Group 19 of the Roadway Equipment Operators on the Wyoming Division) pay for the number of hours performed by the outside forces for the period from sixty days prior to August 25, 1979 to approximately September 4, 1979.

The Carrier attempted to justify its failure to give notice under Rule 52 by contending that the disputed work is not exclusively reserved to Maintenance of Way employees and because all the Carrier's roadway equipment was being utilized on other projects.

None of the Carrier's explanations are adequate to excuse the lack of prior notice. Rule 52 uses the mandatory term "shall" and notice is required regardless of whether or not the erection of earth mounds for signal facilities is historically, traditionally, and customarily performed by Maintenance of Way employees. Third Division Awards No. 18687 (Rimer) and No. 18305 (Dugan). The Carrier has clearly violated Rule 52 of the applicable agreement. The lack of notice foreclosed the Organization from exercising its option to request a meeting to discuss the propriety of contracting out the disputed work.

A long line of Third Division Awards precludes us from providing the claimants with pecuniary relief where they have not proved loss of work opportunity or loss of earnings due to the Carrier's failure to tender the required notice unless the Carrier has flagrantly or repeatedly failed to

comply with Rule 52. See Third Division Awards No. 23354 (Dennis); No. 21646 (Ables); No. 20275 (Eischen) No. 20671 (Eischen); No. 18305 (Dugan). In this case, we do not find any evidence of a malicious motive underlying the Carrier's failure to give the Rule 52 notice.

While we must deny the claimant's request for monetary damages, we expect the Carrier, in the future, to fully and properly comply with the Rule 52 notice provisions.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

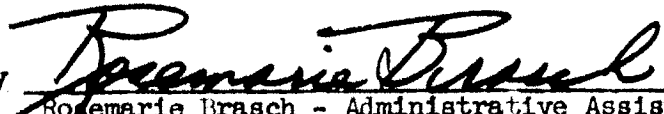
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of March 1982.