

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 25447  
Docket Number MW-25430

Eugene T. **Herbert**, Referee

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way **Employees**  
(The **Denver** and Rio **Grande** Western Railroad Company

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

(1) The Carrier violated the Agreement when it assigned outside forces to perform earth moving work in connection with installing a culvert at Rocky (System **File D-9-82/MW-14-82**).

(2) The Carrier also violated Article IV of the National Agreement of May 17, 1968 when it did not give the General Chairman advance written notice of its intention to contract said **work**.

(3) As a consequence of the aforesaid violation, Machine Operators **J. R. Carlson** and **T. E. Caviness** shall each be allowed pay at **their** respective rates for an equal proportionate share of the total number of man-hours expended by outside forces beginning sixty (60) days retroactive from May 10, 1982.

OPINION OF BOARD: A review of the record in this case clearly establishes that Carrier failed to give notice to the General Chairman of the Organization of Carrier's "**plan** to contract out **work** within the scope of the applicable schedule agreement" in violation of Article IV of the May 17, 1968 National Agreement.

Claimant established to the satisfaction of the Board that culvert installation work is normally work within the Scope of the Schedule Agreement between the Parties.

The Board finds, however, that Claimant has failed in this case to prove a specific loss of work opportunity or loss of earnings resulting from the Carrier's failure to tender the required notice. Accordingly the claim for monetary relief must be denied.

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 **Employees** involved in this dispute are respectively Carrier and **Employees** 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.

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Docket Number M-25430

Page 2

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Claim sustained in accordance with the Opinion.

NATIONAL **RAILROAD** AWVSTUENT **BOARD**  
By Order of Third Division

Attest:

  
Nancy J. Cover - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1985.