

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26422
Docket Number MW-25873

Rodney E. Dennis, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(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 weld frogs (arc weld process) in the vicinity of Council Bluffs and Omaha from May 31, 1982 to July 29, 1982 (System File 5-18-13-14-54/013-210-52).

(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, Mr. R. L. Cooper, Jr. shall be allowed three hundred fifty-two (352) hours of pay at the welder's straight time rate and Mr. M. R. Henry shall be allowed three hundred fifty-two (352) hours of pay at the welder helper's straight time rate."

OPINION OF BOARD: The instant Claim arises as a result of Carrier's contracting out the welding of chipped and worn rail ends and frogs through the use of the arc welding process in the vicinity of Council Bluffs, Iowa, between May 31 and July 29, 1982. Carrier failed to notify the General Chairman of its intention to contract out. The Claim as filed cites the failure to notify the General Chairman and the violation of the scope Rule. It requests 352 hours pay at the Welder Helpers straight-time rate for both Claimants.

This case is another in the long line of contracting out cases this Board has considered that involves Maintenance of Way employees. We have generally taken the position that fully employed Claimants do not receive pay "in lieu" when Carrier fails to notify the General Chairman of its intent to use outside forces, as was the situation in this instance.

This Board does not condone Carrier's failure to notify the General Chairman of its intent to contract out. We do not, however, have any authority to penalize Carrier for this failure under the controlling Agreement.

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 Employes involved in this dispute are respectively Carrier and Employes 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:


Nancy J. Dever - Executive Secretary


Dated at Chicago, Illinois, this 24th day of August 1987.

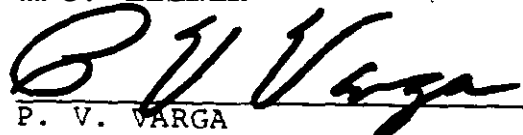
CARRIER MEMBER' DISSENT
TO
AWARD 26422. DOCKET MW-25073
(Referee Dennis)

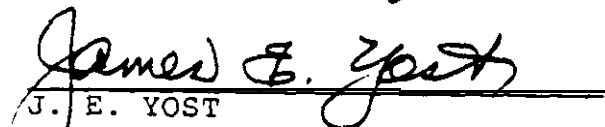
While it may appear academic in this case, we do believe it appropriate to point out that where, as here, the Carrier has contracted out the work in dispute for approximately 50 years without the Organization alleging that such conduct violated any Agreement between the parties, the Carrier's failure to give notice is of such a technical nature that no violation should have been found. To suggest, as does the Majority, that a backpay remedy might have been appropriate if Claimants had not been fully employed, is to place too high a premium of form over substance. See Third Division Award 26301.


M. W. FINGERHUT


R. L. HICKS


M. C. LESNIK


P. V. VARGA


J. E. YOST