

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28789
Docket No. MW-28382
91-3-88-3-161

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Union Pacific Railroad Company

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

(1) The Agreement was violated when the Carrier assigned outside forces to remove an existing right-of-way fence and construct a new fence between Mile Posts 907 and 908 in the vicinity of Altamont, Wyoming beginning August 7, 1986 (System File M-494/870108).

(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) As a consequence of the violations referred to in Parts (1) and/or (2) above, furloughed B&B Carpenters D. E. Kinkale and R. L. Longmire 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 in performing the work referred to in Part (1) hereof."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

Claimants hold seniority on the Wyoming Division as Group 3 Carpenters within the Bridge and Building Subdepartment. At the time this dispute arose, they were on furlough.

The Organization claims that during the month of August, 1986, Carrier contracted with the Neosho Construction Company to dismantle an existing right-of-way fence and to construct a new fence between Mile Posts 907 and 908 near Altamont, Wyoming. According to the Organization, this is work which is

contractually reserved to its members, and, moreover, is work which has customarily, historically and traditionally been assigned to and performed by the Carrier's B&B Subdepartment employees. Relied upon here are Rules 1, 2, 3, 4 and 8, which read, in pertinent part, as follows:

"RULE 1 - SCOPE"

This Agreement will govern the wages and working conditions of employes in the Maintenance of Way and Structures Department listed in Rule 4 represented by the Brotherhood of Maintenance of Way Employes Organization.

RULE 2 - DEPARTMENT

The Maintenance of Way and Structures Department as used herein means the Bridge and Building Subdepartment, the Track Subdepartment, Roadway Equipment Subdepartment, and Miscellaneous Subdepartment as constituted as of the effective date of this Agreement.

RULE 3 - SUBDEPARTMENTS

The following Subdepartments are hereby established within the Maintenance of Way and Structures Department covered by this Agreement:

Bridge and Building Subdepartment
Track Subdepartment
Roadway Equipment Subdepartment
Miscellaneous Subdepartment

Any Subdepartment hereafter established, including Groups and Classes within such Subdepartment, shall be by negotiations and agreement between the parties to this Agreement.

RULE 4 - SENIORITY GROUPS AND
CLASSES SHALL BE AS FOLLOWS:
BRIDGE AND BUILDING SUBDEPARTMENT

* * * *

Group 3 (a) Bridge and Building Foremen
(b) Assistant Bridge and Building Foremen,
Fence Gang Foremen and Scale Gang Foremen
(c) Bridge and Building Cabinet Maker -
Bench Carpenter

- (d) Carpenter - Machine Operators
- (e) B&B Welder
- (f) Carpenter
- (g) Apprentice Carpenter
- (h) Carpenter Helper

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RULE 8 - BRIDGE AND BUILDING SUBDEPARTMENT

The work of construction, maintenance and repair of buildings, bridges, tunnels, wharves, docks, non-portable car buildings, and other structures, turntables, platforms, walks, snow and sand fences, signs and similar structures as well as all appurtenances thereto, and other work generally so recognized shall be performed by employees in the Bridge and Building Subdepartment.

* * * *

SECTION 1 - Bridge and Building Carpenter:

An employee assigned to the construction, repair and maintenance of building, bridges or other structures, (except structural, iron or steel work provided for in Section IV), including the building of concrete forms, erecting false work, etc., or who is assigned to miscellaneous mechanic's work of this nature, shall constitute a bridge and building carpenter."

The Organization further asserts that Carrier was required to timely notify the General Chairman of its plans to contract out the disputed work, and, in failing to do so, violated Rule 52 and the Letter of Agreement dated December 11, 1981 in which the parties jointly reaffirmed their good faith efforts to adhere to the advance notice requirements prior to contracting out.

Carrier asserts that the work at issue was performed in conjunction with a project undertaken to stabilize the roadbed in the area between Mile Post 907 and 908 near Altamont. Carrier contends that the work which included grading, extending culverts for drainage, raising the track and the fence work: (1) was beyond the scope of what Carrier forces had historically accomplished; (2) constituted an "emergency"; (3) was not exclusively reserved to maintenance of way employees by rule or past practice; and (4) did not have to be broken down or "piecemealed."

This Board has carefully reviewed the evidence as presented on the property and finds that, despite the volley of arguments fired by each party, the determination of the instant case rests on the threshold question of whether the disputed fence work is reserved to the Organization by rule or historic practice. On that crucial point, it is clear that the Agreement rules cited do not assign to the employees in clear and unambiguous terms the

work at issue here. Rule 1, the Scope Rule, is general in nature and under innumerable decisions handed down by the Board, does not grant the Organization exclusive right to the work in question. Moreover, even if we were to agree with the Organization as a general matter that a classification rule could reserve the work listed thereunder to the employees within the class, it is clear that in this particular case, the work claimed is not expressly enumerated under Rule 8, the Classification of Work Rule. While snow and sand fences fall within the rubric of work reserved to Carrier forces there was no evidence presented that the fences at issue here were of that type.

Accordingly, in order to prevail, the Organization was required to prove that the work has been performed historically and traditionally by the employees as a matter of practice. The record shows that the Organization has not sustained that burden so as to warrant a finding that the fence work is reserved to them. Therefore, the Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1991.