

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Union Pacific Railroad Company (former Missouri
(Pacific 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 (Master Track, Inc.) to unload new ties and recover used ties on the right-of-way in the vicinity of Laredo, Texas on the Palestine Division beginning June 29, 1987 [Carrier's File 870673 (MPR)].

(2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it failed to notify the General Chairman in advance of its intention to contract out said work.

(3) The Agreement was further violated when the claim* as presented by General Chairman Borden on August 21, 1987 to Regional Engineer G. R. Lilly was not disallowed by Mr. Lilly in accordance with Rule 12, Section 2(a).

(4) As a consequence of the violations referred to in Parts (1) and/or (2) and/or (3) above, Foreman R. Castro, Trackman Driver J. E. Lara, Trackmen T. C. Flores, A. R. Cisneros, I. Lucio, Machine Operators M. A. Espinoza, J. E. Martinez, P. Amaro and Helper J. C. Cruz shall each be allowed pay for:

'... eight (8) hours per day, including any overtime and any holidays falling therein, beginning June 29, 1987, and continuing so long as said contractor performs the above described work to exclusion of Claimants.'

*The initial letter of claim will be reproduced within our initial submission."

FINDINGS:

The Third 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 employees 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.

The essential facts are not in dispute. The Claim dated August 21, 1987, alleged violations of the Agreement when Carrier, without proper notice, contracted out the work of unloading new ties and recovering used ties on the right of way of its Palestine Division near Laredo, Texas, beginning June 29, 1987, and continuing. In addition to raising several defenses on the merits, Carrier admits it failed to respond to the Claim within the time limits provided by Rule 12 Section 2(a) of the Agreement. Under these circumstances, Carrier concedes the only issue is the measure of damages. Again Carrier raises defenses on the damages issue.

Rule 12 Section 2(a) provides, among other things, that the Claim "... shall be allowed as presented ..." on a non-precedent setting basis. The Claim must, therefore, be sustained on procedural grounds without reaching any of the issues on the merits.

On this record, however, the Claim is specific as to the number of Claimants and the hours claimed for only one day, June 29, 1987, although the disputed work continued for some time beyond that date. The Board, therefore, orders this two-part remedy:

1. Carrier shall pay each of the named Claimants 8 hours pay at their respective prorata rates of pay for June 29, 1987.
2. The remaining damages issue is remanded to the parties to examine records to determine the total number of hours worked by contractor forces during the rest of the project. Carrier shall pay each of the named Claimants a proportionate share of the total hours at each Claimant's respective prorata rate of pay.

A W A R D

Claim sustained in accordance with the Findings.

Form 1
Page 3

Award No. 28890
Docket No. MW-29073
91-3-89-3-513

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1991.