

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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 Agreement was violated when the Carrier assigned outside forces to construct a new diesel fuel line in the vicinity of Pike Avenue Yard in North Little Rock, Arkansas beginning September 8, 1986 (Carrier's File 870057 MPR).

(2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it failed to timely notify the General Chairman of its intention to contract said work fifteen (15) days in advance of the contracting transaction.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, furloughed Water Service Assistant Foreman W. R. Bradford shall be allowed pay at the assistant foreman's rate for one hundred twenty (120) hours at the straight time rate and four and one-half (4.5) hours at the time and one-half rate."

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.

During September 1986, the Carrier engaged an outside contractor to construct a new diesel fuel line at North Little Rock, Arkansas. The Organization's Claim here closely parallels, except in one respect, the dispute reviewed in Third Division Award 29021, and that Award is incorporated herein by reference.

The one difference is that the Carrier did provide notice to the Organization concerning the project. However, such notice was given under date of September 16, 1986, while the work in question had begun earlier on

September 8, 1986. This clearly does not meet the requirement of Article IV--Contracting Out of the Agreement of May 17, 1968, which calls for notice "in advance of the date of the contracting transaction as is practicable and in any event not less than 15 days prior thereof."


Because of the tardy (and therefore ineffectual) notice and based on the Board's reasoning in Third Division Award 29021, the Claim must be supported.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 28th day of October 1991.