

The Third Division consisted of the regular members and in addition Referee Charlotte Gold 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 (Neosho Construction Company) to build a cement box culvert at Bridge No. 499.4 in the vicinity of Van Buren, Arkansas on January 16, 17, 18, 19, 20, 21, and 22, 1989 (Carrier's File 890187 MPR).

(2) The Agreement was further violated when the Carrier failed and/or refused to furnish the General Chairman with advance written notice of its intention to contract out said work as required by Article IV of the May 17, 1968 National Agreement.

(3) As a consequence of the violations referred to in Parts (1) and (2) above, B&B Foreman J. A. LaFon, Motor Car Operator G. J. Durst, Foreman C. W. Creekmore, Assistant Foreman M. R. Cordray, Assistant Foreman A. L. Howell, Mechanic J. W. Penrod, Helper B. Roper, Helper M. E. Smith, Assistant Foreman R. R. Forehand and Mechanic J. C. Boyer shall each be allowed pay at their respective straight time rates for an equal proportionate share of the three hundred seventy-five (375) man-hours expended by the outside contractors performing the work in Part (1) above.

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.

By notice to Carrier dated March 7, 1989, the Organization filed a Claim on behalf of ten Central Division B & B employees for seven days' pay during the period from January 16 to 22, 1989, when Carrier hired outside

forces to build a cement box culvert at Bridge No. 499.4 in the vicinity of Van Buren, Arkansas. Because of a procedural irregularity in the handling of the dispute on the property, the Claim must be sustained.

Under Rule 12, Section 2(a) of the Agreement, the Carrier, in electing to disallow a Claim or grievance, is required to "notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance." If proper notice is not provided, "the claim or grievance shall be allowed as presented...."

In responding to the Organization's Claim on March 17, 1989, the Carrier gave as its reason for rejecting it the fact that:

"Investigation into the merit of this claim reveals that the Agreement is absent of language which reserves the picking up and banding of ties exclusively to employees covered by the BMW Agreement."

A later denial of the Organization's appeal by the Carrier stated that:

"The Carrier continues to maintain that the performance of the work has been accomplished by contractors forces in the past. Previously you have been furnished partial lists of contracts detailing contracts which have been issued over the years relative to equipment support and picking up and clean up debris, etc. These lists, and in the case of the copies of contracts furnished support and substantiate the Carriers position of having a longstanding practice over a number of years. They are also available for your personal review in this office at any time you so desire."

Given Carrier's failure to comply with Section 2(a) of Rule 12 and provide proper notification of its reason for disallowing the Claim at the initial step of the procedure, the Claim must be allowed as presented.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1992.