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NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29474  
Docket No. MW-29009  
93-3-89-3-433

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 used an outside concern to perform hauling and handling of track and crossing materials on the Old Omaha Sub on August 24, 25, 26, 27, 31, and September 1, 2, 3, 8, 14, 15, 16, 17, 21, 22, 23, and October 1, 5, 6, 7, 12, 13 & 14, 1987 (Carrier's File 870867 MPR).

(2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it did not give the General Chairman advance written notice of its intention to contract said work."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record band 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.

This Claim concerns the Carrier's employment of contract forces to operate a backhoe and dump truck in addition to Carrier forces in grade crossing renewal work, as well as the failure of the Carrier to provide advance notice to the General Chairman under article IV of the May 17, 1968 Agreement.

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This dispute is virtually identical to that reviewed in Third Division Award 28849, and the Board here reaches the same conclusion as in that Award, which stated:

"The Carrier is hereafter required to provide notice of plans to contract out. The record contains no evidence submitted by the Organization that the Carrier's actions were ever protested [in many previous instances]. As the Carrier has come to rely upon its procedure, it cannot now be held responsible for compensation. We deny that part of the Claim."

The Award will require the same consequence. The Board notes that Award 28849 was issued on June 25, 1991, well after the dispute here under review. Thus, that Award's requirement as to future Carrier action was not in effect at the time of this dispute.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 21st day of January 1993.