

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29513
Docket No. MW-29192
93-3-90-3-58

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance
(of Way Employees
(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned outside forces (Heck and Wicker Construction Company) to perform bulldozer operating work (building up shoulders) at Romero siding in the vicinity of Mile Post 578.4 from August 14 through September 18, 1988 (System File MW-88-91-CB/476-37-A).

(2) The Agreement was also violated when the Carrier assigned the same outside forces to perform bulldozer operating work (cleaning and grubbing the right-of-way) in the vicinity of Dalhart Yards beginning September 19, 1988.

(3) The Agreement was also violated when the Carrier failed to give the General Chairman advance written notice of its intention to contract out the work identified in Parts (1) and (2) above.

(4) As a consequence of the violations referred to in Parts (1), (2) and/or (3) above, furloughed Machine Operator J. Heyward shall be allowed pay at the applicable straight time and overtime rates for an equal proportionate share of the total number of straight time and overtime man-hours expended by the contractor performing the work identified in Parts (1) and (2) 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 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 a contention by the Organization that Carrier used forces of an outside contractor to perform work connected with building up shoulders at Romero Siding in the vicinity of Mile Post 578.4 between August 14 and September 18, 1988, without first giving the notice required by Article 33 of the Agreement. The record before this Board clearly demonstrates that the notice requirements of Article 33 were not satisfied. Carrier is not privileged to utilize the forces of a contractor in non-emergency situations without first satisfying the notice requirements of Article 33 and participating in a good faith attempt to reach an understanding concerning the contracting project.

The Claim of the Organization has merit. It will be sustained.

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 3rd day of February 1993.