

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29567  
Docket No. MW-29246  
93-3-90-3-125

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, during September, 1988, the Carrier assigned outside forces to perform mechanical repair work on the AW39M Electric Welder and the AC101M Air Compressor which were assigned for use in the Concrete Products Yard in North Little Rock, Arkansas (Carrier's File 890013 MPR).

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

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Work Equipment Mechanics R. Hughes and R. McKinney shall each be allowed twelve (12) hours and fifteen (15) minutes of pay at their respective time and one-half rates."

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 employe 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.

Form 1  
Page 2

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On September 9 and 15, 1988, the Carrier assigned to an outside concern the mechanical work of repairing an electrical welder and an air compressor. No advance notice under Article IV of the May 17, 1968 National Agreement was provided to the General Chairman. The Organization asserts without contradiction that the work involved 24.5 hours by the outside concern.

In this dispute, the parties raise the various arguments of scope coverage, exclusivity, and full employment by the Claimants, which have been subject to review in many other Awards. In this instance, the Carrier has asserted but provided no proof that the work is not customarily performed by Maintenance of Way employees in the normal course of their assignments. In addition, the absence of advance notice is not contested.

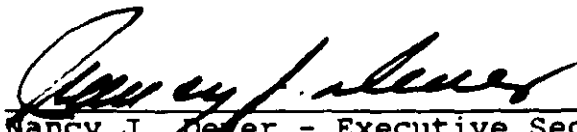
Under the circumstances, however, the request for pay at the punitive rate is inappropriate, and the Claim will be sustained at the pro rata rate.

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 9th day of March 1993.