

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29611
Docket No. MW-29905
93-3-91-3-286

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

(Brotherhood of Maintenance
of Way Employees
PARTIES TO DISPUTE: (
(Union 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 (C. M. Construction, Inc.) to perform B&B steel erection work comprised of constructing a structural steel frame for the Carmen locker and lunchroom building at the Shop Facility in Pocatello, Idaho on January 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18 and 19, 1990 (System File S-278/900344).

(2) As a consequence of the violations referred to in Part (1) above, Northwestern District Steel Erection employees G. D. Johnson, R. J. Fetters, R. L. Payne, P. R. Armstrong, J. M. Sewright and H. E. Allgood shall each be allowed ninety-three and one-third (93 1/3) hours' pay at their respective straight time rate as compensation for their lost work opportunity."

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.

On August 8, 1989, the Carrier served notice of its intent to subcontract the construction of the structural steel framework for a locker room and lunch room at the Carrier's shop facility at Pocatello, Idaho. Following a conference held with the Organization on September 15, 1989, the Carrier proceeded with the project. The Organization contends that the Carrier violated Rule 52 when it contracted out the work.

Rule 52 provides in pertinent part as follows:

"(a) By agreement between the Company and the General Chairman work customarily performed by employees covered under this Agreement may be let to contractors...[conditions listed].

(b) Nothing contained in this rule shall affect prior and existing rights and practices of either party in connection with contracting out...

(d) Nothing contained in this rule shall impair the Company's right to assign work not customarily performed by employees covered by this Agreement to outside contractors."

While asserting that the work in question belongs to Bridge and Building Subdepartment employees, the Organization has not shown that such work was "customarily performed" by the employees. The Carrier presented persuasive evidence that similar construction work has been frequently contracted out over the course of many years.

Following a long line of Third Division Awards involving similar disputes between the parties (see, for example, Third Division Awards 28610 and 28943), we conclude that the Carrier had the right to subcontract the work under Rules 52(b) and (d) of the Agreement, and we will therefore deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of April 1993.