

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29644
Docket No. MW-28103
93-3-87-3-680

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Duluth, Winnipeg & Pacific Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned outside forces to install culverts and reroute Flint Creek beginning September 22, 1986 (System File G. 106-N-86(S)/#208).
- (2) The Carrier violated Rule 55 when it did not give the General Chairman advance written notice of its intention to contract said work.
- (3) As a consequence of the aforesaid violation Group I Machine Operator B. Netzel shall be compensated for all straight time and overtime wage loss suffered beginning September 22, 1986 and continuing until such time as the violation is corrected."

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.

Claimant is a Group I Machine Operator in the Carrier's B & B Department. At the time this dispute arose, Claimant was furloughed. The on-property handling discloses that commencing September 22, 1986 the Carrier used a contractor to place five 8 inch diameter culverts at MP 102.7 for the purposes of rerouting Flint

Creek. The contractor utilized three large backhoes (ranging in size from 1 to 2-2/3 cubic yard buckets) along with a D-6 dozer. That type of equipment is not owned by the carrier. The Carrier asserts that it is unable to rent that type of equipment, without operators and even if its employees were qualified to operate that type of equipment, the contractor would not have allowed them to do so.

No notice was given by the Carrier to the Organization of its intent to contract out this particular work.

Rule 55 states, in pertinent part:

" RULE 55 - CONTRACTING OUT

In the event a carrier plans to contract out work within the scope of the applicable schedule agreement, the carrier shall notify the General Chairman of the organization involved in writing as far in advance of the date of the contracting transaction as it is practicable and in any event not less than 15 days prior thereto."

* * *

It is undisputed that the Carrier did not give the Organization notice of its plans to contract out this work. The type of equipment utilized and the work at issue clearly fell "within the scope of the applicable schedule agreement" as equipment utilized by and work performed by Group I Machine Operators. Irrespective of the Carrier's contentions that it could contract out the work under these given circumstances because it did not own this equipment or because of the alleged lack of qualifications of Claimant, nevertheless, before that issue can be addressed, Rule 55 imposes a threshold obligation upon the Carrier to give the Organization advance notice of its intent to contract out the work where the work falls within the scope of the agreement. Because the Carrier did not give such notice in this case, Rule 55 was not followed.

From the record, there are no apparent reasons evident why full remedial relief should not be afforded. The claim will, therefore, be sustained as presented but limited to the particular project complained of.

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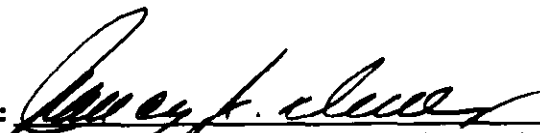
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A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever, Secretary to the Board

Dated at Chicago, Illinois, this 7th day of June, 1993.