

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29753
Docket No. MW-29968
93-3-91-3-364

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Union Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (City of Lawrence, Kansas) to protect vehicular and pedestrian traffic at Fourth and Locust Streets in Lawrence, Kansas, beginning March 5, 1990 and continuing through June 8, 1990 (System File S-300/900404).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intention to contract out said work as required by Rule 52.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, furloughed Kansas Division Group 17 Sectionman D. C. Selbe shall be allowed five hundred sixty (560) hours at his straight time rate of pay or \$6,776.00."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The underlying facts in this matter are not in dispute. The Carrier had been using the Claimant to flag a crossing for school children at Fourth and Locust Streets in the city of Lawrence, Kansas. The Claimant spent a short time performing these duties on school days and spent the rest of his time on normal maintenance duties. In March 1990, Claimant's job was abolished and he was reassigned to a new location.

After the position was abolished, the City of Lawrence hired a school crossing guard to flag the crossing, and the Carrier agreed to reimburse the City for its costs, stating in its submission that it did so as part of an overall community relations effort. The Organization alleges that this action constitutes a violation of Rule 52, which requires that the Carrier give advance notice to the Organization when it contracts out work covered by the Agreement.

After reviewing the record in this case and the Agreement, the Board finds that the Carrier had no legal obligation to provide flagging protection at this crossing. While the Organization might have a colorable claim if the Agreement required the Carrier to use the Claimant to perform these services, the Board finds that this was a voluntary undertaking by the Carrier which it subsequently decided to abandon. Since the Carrier had no obligation to provide the services, the provisions of Rule 52 are not operative in this matter and we find that the Carrier is not in violation of the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 20th day of September 1993.