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NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29782
Docket No. MW-28813
93-3-89-3-211

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(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 to perform bridge repair work i.e., application of epoxy grout, to the concrete portions of the bridge located near Mile Post 186.19 near McCammon, Idaho beginning July 30, 1987 through August 15, 1987 (System File M-652/880026).
- (2) The Agreement was further violated when the Carrier failed to timely schedule and hold a meeting to discuss its plans to assign said work to outside forces, as requested by the General Chairman, in accordance with the provisions of Rule 52(a) and the December 11, 1981 Letter of Agreement.
- (3) As a consequence of the aforesaid violations, furloughed Group 3 Idaho Division Bridge and Building Employes R. W. Tilley, M. S. Tilley and G. O. Harmon shall each be allowed ninety-six (96) hours of pay at their respective rates for the work performed from July 30, 1987 through August 15, 1987."

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 September 14, 1987, the Organization filed a claim on behalf of furloughed Claimants alleging the Carrier hired outside contractors to perform bridge repair work located near M.P. 186.19 on the Idaho Division. Also, the Organization alleged that the Carrier failed to timely schedule a conference prior to assigning the work per the Organization's request. A conference was held to discuss the work in question 8 days after work had already begun.

The Carrier denied the claim contending that it has hired outside contractors in the past to perform bridge repair work and the Organization has never protested. The Carrier also added that it had no current B&B personnel who were capable of operating any epoxy injection equipment.

This Board has reviewed the extensive record in this case and we find that the Organization has not met its burden of proof that the Carrier violated the Agreement when it subcontracted the epoxy injection bridge repair work. Therefore, the claim must be denied.

The record reveals that the Carrier for many years has utilized outside contractors to perform the same type of bridge repair work and has been doing so without protest from the Organization. In addition, the record reveals that the epoxy injection work was performed by an outside contractor and the Carrier did not have any employees or equipment that could be utilized for that purpose.

The Organization has not demonstrated that the Scope Rule or any other Rule or part of the Agreement grants ownership of the work in question to the Organization represented employees.

With respect to the notice issue, the record reveals that notice was served on the Organization on May 7, 1987. The Organization responded to that notice on May 18, 1987, although the request for a conference was not made until June 2, 1987. The work at issue involved the repairs to the bridge beginning on July 30, 1987, and continuing through August 15, 1987.

Since the Organization was properly notified of the subcontracting, and the contracting out of bridge repair work has taken place on numerous occasions in the past without any challenge from the Organization, this Board cannot find that the Carrier violated the Agreement when it contracted out the injection of the

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epoxy grout work in connection with the bridge repairs. Therefore, the claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin sh
Catherine Loughrin - Interim Secretary to the Board

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