

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 29965  
Docket No. MW-29436  
93-3-90-3-366

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

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

- (1) The Agreement was violated when the Carrier assigned outside forces (Bud Rich and Kalal Construction) to perform track repair and other related derailment work at Mile Post 177, Umatilla, Oregon from October 17, 1988 through October 21, 1988 (System File S-129/890260).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance 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, Roadway Equipment Operators D. T. Green, C. F. Barnett, R. V. Robinson, J. A. Wheeler and Truck Operator W. S. Bates shall each be allowed forty (40) hours of pay at their respective straight time rates and three (3) hours 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 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.

On October 12, 1988, a Carrier freight train derailed while removing a train load of soda ash from the Umatilla Army Depot. As part of the work required because of the derailment, the Carrier engaged, as contended by the Organization, outside forces (five workers) for the period from October 17 through October 21, 1988. No advance notice was given to the Organization.

The parties do not agree as to the extent of the work performed by outside forces. The Carrier contends such work was limited to transloading of soda ash, while the Organization claims the outside forces performed "track repair and other related work". As in numerous other disputes involving contracting, the parties are at odds as to the applicability of the Scope Rule and related Rules and the general intent of Rule 52, Contracting. No resolution based on these arguments is required here, however, since the matter may be resolved on a much narrower basis.

The Carrier relies on that portion of Rule 52 which specifically permits the Carrier to let work to contractors "when emergency time requirements exist which present undertakings not contemplated by the Agreement and beyond the capacity of the Company's forces". The Board concurs that the work in connection with a derailment is reasonably interpreted to be emergency work. While it is the case that outside forces did not commence work until some days after the derailment, the Carrier contends without contradiction that all appropriate maintenance of way forces were otherwise engaged at the time. It is clearly reasonable to conclude that the restoration work at the derailment site could not wait until some later time when Carrier forces may have been available.

Even assuming all other factors as argued by the Organization (and the Carrier takes exception to such conclusions), what remains is that the Carrier responded to an emergency condition and engaged outside forces without loss of work to Carrier forces at the time the work had to be done.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

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

Dated at Chicago, Illinois, this 17th day of December 1993.