

## NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award No. 29966

Docket No. MW-29466

93-3-90-3-397

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 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 used outside forces to perform asphalt paving work at the Cheyenne Street Crossing and in the Pocatello, Idaho Yard on April 18, 1989 (System File S-180/890599).
- (2) The Agreement was further violated when the Carrier did not give the General Chairman advance written notice of its intention to contract the work involved here in accordance with Rule 52.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, B&B Carpenters M. S. Tilley, G. O. Harmon, C. J. Wisler and W. S. Wallace shall each be allowed pay for seven (7) hours at their respective straight time rates of pay."

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 April 18, 1989, the Carrier assigned an outside contractor to perform asphalt work in and around Pocatello, Idaho. No advance notice of such contracting was provided to the Organization.

As in other disputes before the Board, the Carrier has demonstrated that work of this particular nature has been contracted to outside forces over an extended period and in a substantial number of instances. The Board has no reason to dispute the Organization's contention that maintenance of way forces also perform this and similar types of work. In the face of the Carrier's demonstration of past practice as to asphalt work, however, attention must be paid to that portion of Rule 52, Contracting, which reads as follows:

"(b) Nothing contained in this Rule shall affect prior and existing rights and practices of either party in connection with contracting out. Its purpose is to require the Carrier to give advance notice and, if requested, to meet with the General Chairman or his representative to discuss and if possible reach an understanding in connection therewith."

There remains the question of notice to the General Chairman. This issue is reviewed in Third Division Awards 28610 and 29474, among others. These Awards direct the Carrier to comply in the future with notice requirements, particularly where the Organization has raised an issue as to types of work not previously questioned. The Award here is to the same effect. However, the Claim here under review was initiated prior to the issuance of the cited Awards. As a result, the Carrier cannot be held responsible here for failure to have complied with the subsequent Awards.

A W A R D

Claim sustained in accordance with the Findings.

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.