

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30034
Docket No. MW-29505
94-3-90-3-435

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 (Patrick - Harrison) to perform tunnel repair work at Tunnel No. 15 on the Spokane Subdivision between park and Hooper Junction, Oregon from May 10, 1989 through June 8, 1989 (System File S-192/890662).
- (2) The Agreement was further violated when the Carrier failed to timely meet with the General Chairman to discuss matters relating to the contracting out of said work as required by Rule 52.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above:

'***furloughed Claimants Francois, Gillis, Eisenbarth and Kuhn should each be paid one hundred and sixty (160) hours of pay at their respective rates of pay for the tunnel work accomplished by contracting forces as of this date plus future hours of tunnel hours worked by the contractor. Claimants Adams, Geiss, Lucas and McIntyre should each be paid one hundred forty three and three-fourths (143 3/4) hours of time and one-half pay at their respective rates of pay for overtime hours consumed by outside forces as of this date plus future hours of tunnel overtime worked by the contractor. The claim is considered continuous until such time as Claimants are rightfully assigned tunnel work.'"

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.

By letter dated December 16, 1988, the Carrier notified the General Chairman as follows:

"This is to advise of the Carrier's intent to solicit bids to cover the rehabilitation of Tunnel No. 15 at M.P. 281.35 on the Spokane Subdivision between Park and Hooper Jct., Oregon.

Special skills, equipment and materials are required and therefore beyond the capacity of Company forces."

The General Chairman replied in timely fashion contending that the "inadequate information" in the Carrier's letter "does not serve as a procedurally correct notice as required by Rule 52." The Carrier replied that the General Chairman "could have requested a conference" for the information desired but failed to do so; the letter further offered to hold a conference if requested by the General Chairman. On March 30, 1989, the General Chairman requested a discussion of the matter "in conference", without proposing a date. Conference on the matter was eventually held on June 23, 1989. By then, however, the project had been initiated and completed.

Having provided notice of its intention, the Carrier was obliged only to honor the General Chairman's request for a conference. The record shows that such request was made months later. The Board finds no violation of Rule 52 in the Carrier's action in proceeding with the project, while at the same time agreeing to a conference, as scheduled, after the fact.

As to the question of whether the work was appropriately contracted instead of being assigned to maintenance of way forces,

the Superintendent of Transportation Services provided convincing justification in his reply during the claim handling procedure. He noted that the work involved "major rehabilitation" of the tunnel for which the Claimants lacked experience. The Superintendent also noted that the Building and Bridges department did not have a variety of specialized equipment (i.e., jack leg rock drill, gunnite machine, jumbo scissor lift) required for the tunnel work. These considerations meet the requirements of Rule 52 as to the Carrier's contracting of the work.

Third Division Award 22850, involving the same parties, concerns a similar if not identical dispute, and the reasoning therein is supportive of the Board's conclusions here.

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 February 1994.