

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30067  
Docket No. MW-29663  
94-3-91-3-5

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Union Pacific Railroad Company (former  
(Missouri 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 (Marlatt Construction) to perform track work and right of way maintenance (installing ties, rail, switch panels and clean up) in the St. Joseph Terminal beginning August 28 and continuing through October 25, 1989 (Carrier's File 890699 MPR).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with timely and proper advance written notice of its intention to contract out said work as required by Article IV of the May 17, 1968 National Agreement.
- (3) As a consequence of the violations in Parts (1) and/or (2) above, Machine Operators K. D. Eichelberger and M. L. Fitzgerald shall each be compensated at their respective straight time and overtime rates for all straight time and overtime hours expended by the outside contractor performing the work in Part (1) above."

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.

The Organization has raised timely objections to evidence offered by the Carrier de novo in its Submission. None of the evidence so offered will be considered by the Board. The Board's findings are based solely upon the record established on the property.

At the time of the events precipitating this case, Claimants were regularly assigned on the Omaha Division to operate Division machines headquartered in the St. Joseph, Missouri Terminal. By letter of June 5, 1989, the Carrier notified the General Chairman as follows:

"This is to advise of the intention of the Company to solicit bids to contract the following work:

PLACE: St. Joseph, Mo. Yard

SPECIFIC WORK: Supplying backhoe and dump truck for maintenance work on yard tracks."

On June 12, 1989, the Parties met to discuss the notice. Carrier subsequently hired a contractor to provide the two pieces of equipment mentioned along with an operator for each piece of equipment. The contract employees worked from August 28 through October 25, 1989. During that time, they worked with Carrier maintenance of way forces in accomplishing the required work. On October 25, 1989, the Organization filed a grievance on behalf of Claimants.

A review of the record before the Board indicates that Carrier did comply with Article IV of the May 17, 1968 Agreement when, on June 12, 1989, it notified the Organization of its intention to contract out the disputed work. It is undisputed that the Parties also met prior to commencement of the work to discuss the notice. Furthermore, it is undisputed that no maintenance of way employees were furloughed during the time the work took place.

Accordingly, in order to meet its burden of persuasion in this claim, the Organization must show that the work at issue has been reserved exclusively to maintenance of way employees. As noted in Third Division Award 29646, the Scope Rule contained in the Agreement between the Parties cites employe classifications, not work reserved to those employees. Thus, there is no basis for this Board to find that the Carrier is precluded from contracting out the work in question.

Form 1  
Page 3

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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.