

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30201  
Docket No. MW-29841  
94-3-91-3-210

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO THE 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 or otherwise permitted outside forces (John Nunn of Laramie, Wyoming) to construct and repair right of way fence between M.P. 558.65 and M.P. 561.25 near Laramie, Wyoming beginning October 10, 1989 and continuing (System File S-236/900144).
- (2) As a consequence of the violation in Part (1) above, furloughed Wyoming Division Maintenance of Way employes A. Guardiola, D. D. Fernandez, B. H. Bogart and L. F. Hill shall each be allowed pay at the B&B laborer's rate for an equal proportionate share of the total number of man-hours expended by the outside forces."

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.

This claim is on behalf of four furloughed employees in the Maintenance of Way Department, in the Wyoming Division, who had submitted availability forms to Carrier indicating a willingness to accept employment in the B&B Subdepartment working on right-of-way fencing. The Organization alleges that its General Chairman was placed on notice on May 15, 1989, of Carrier's intent to subcontract the work at issue here, and that the work was commenced by a subcontractor on October 10, 1989.

Carrier maintains that it served an informational notice on the Organization that ranchers in Wyoming would be performing fencing work on their property and that no subcontracting took place.

The record reveals sufficient evidence that when fencing work of this type (exceeding one mile) has been performed by Carrier's forces, it has been done by B&B Subdepartment employees. It also reveals numerous examples of contracting out such work by Carrier to outside forces. Further, there is an indication that the parties met in conference to discuss various ways to handle the issue. At the same time, however, this Board must agree with Carrier that, from a technical point of view, there is no direct evidence of subcontracting. Although various arrangements with Wyoming ranchers were apparently discussed and considered, this Board has no way of knowing if any arrangement was made. The Organization failed to meet its burden in this case and thus its claim must fail.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.