

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30202
Docket No. MW-29856
94-3-91-3-230

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 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 or otherwise permitted outside forces (Broken Circle Cattle Company of Evanston, Wyoming) to construct and repair right of way fence between M.P. 895.50 and M.P. 897, near Spring Valley, Wyoming and between M.P. 903 and M.P. 907.25, near Altamont, Wyoming beginning November 6, 1989 and continuing (System File S-255/900222).
- (2) The Agreement was further violated when the Carrier failed to timely furnish the General Chairman with proper advance written notice of its intention to contract out said work.
- (3) As a consequence of the violations in Parts (1) and/or (2) above, Bridge and Building Subdepartment employees J. Medina, N. H. Trujillo and I. Caro shall each be allowed pay at the B&B laborer's rate for an equal proportionate share of the total number of manhours expended by the outside forces 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.

At issue in this Claim is the work of repairing and constructing right-of-way fence near Spring Valley and Altamont, Wyoming, commencing in November 1989. The Organization contends that the work rightfully belongs to its members and that it was contracted out erroneously by Carrier in violation of Rule 52 and related provisions of the parties' Agreement.

As in Third Division Award 30201, a companion case, the Organization failed to produce probative evidence of subcontracting by Carrier to the rancher in question, who had leased property from Carrier. Absent this evidence, there is no basis on which to sustain this Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Linda Woods
Linda Woods - Arbitration Assistant

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