

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30281
Docket No. MW-28947
94-3-89-3-374

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

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(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 (Muller Construction Company) to remove and burn drift from Bridge No. 4662 in Coffeyville, Kansas on May 1, 4, 19, and 20, 1987 (Carrier's File 870795 MPR).
- (2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it failed to notify the General Chairman in writing of its intention to contract out said work.
- (3) As a consequence of the violations referred to Parts (1) and/or (2) above, B&B employees J. A. Henderson, A. J. Hill, G. Fisher, M. R. Cordray, J. A. LaFon, A. L. Howell, and J. H. Duggin shall each be allowed pay at their respective rates for an equal proportionate share of the thirty-two (32) hours expended by the contractor performing the work mentioned 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 employee or employees involved in this dispute are respectively carrier and employee 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 basic facts are not disputed. Without advance notice the Carrier contracted with an outside concern to remove drift from Bridge 466-2. The contractor, working with one B&B employee, utilized a backhoe and small dozer to remove and burn the debris in question.

This case involves the application of Article IV of the May 17, 1968 Agreement concerning contracting out. There are several issues presented. They are (1) was advance notice required? (2) is the work in question scope-covered? and (3) if either question is answered affirmatively, is a monetary remedy appropriate?

With respect to the issue of notice, we find that advance notice was required. Third Division Award 28654, a case involving these same Parties, held, in part, that the Carrier must give notice of its plans to subcontract work ". . . which may arguably come within the Organization's jurisdiction of work . . ." In cases of mixed practice, notice is required. Although it must be kept in mind that the giving of notice is not a concession that the work is ultimately scope-covered or that subcontracting is prohibited.

The next issue is whether the work is scope-covered. First, the Board is not convinced that this particular work is reserved to the bargaining unit by the specific, clear, and unambiguous language of the Agreement. We are also not convinced that the Parties have mutually agreed through practice, by any standard, that the removal of drift from bridges is work reserved to B&B employees. Two additional ancillary comments can be made. First, the Board is not convinced that the Carrier did not make a good-faith effort to procure rental equipment. Second, the Organization has not adequately rebutted the Carrier's contention that all available personnel were occupied.

The remaining question is whether any monetary remedy is appropriate due to the fact no notice was issued. We note in this regard that the Claimants were fully employed, and we are not convinced of a discernable lost work opportunity. The remedy is therefore, limited to directing the Carrier to issue notice in the future under similar circumstances.

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AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of July 1994.