

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30469  
Docket No. MW-30130  
94-3-91-3-564

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

(Brotherhood of Maintenance of Way  
(Employees  
PARTIES TO DISPUTE: (  
(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 an outside concern (American Fence Company to construct chain link fencing between Ross Park Shanty and the New Yard Office at Pocatello, Idaho beginning July 16, 1990, (System File S-368/900642).
- (2) As a consequence of the aforesaid violation, B&B Foreman A. S. Kunz and B&B Carpenters D. H. Dector, R. R. Olsen, W. S. Wallace, M. S. Tilley and R. W. Tilley shall each be allowed seventy-two (72) hours pay at their respective rates of pay in the amount of equal proportionate shares of the remaining man-hours expended by the contractor's forces on a continuing basis."

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.

On June 18, 1990, the Carrier served notice of its intent to use the services of American Fence Company to install approximately 2,400 feet of chain link fence at Pocatello, Idaho. This claim represents yet another protest by the Organization challenging the Carrier's contention it may subcontract such work on the basis of past practice. Although the Organization questioned the specifics of the Carrier's offered proof of past practice, it is evident from the record the Carrier has contracted out fence work over a long period of time that predates the establishment of Rule 52 in 1973.

Herein, there is no claim that the Carrier failed to give notice of its intent to contract out the work. The issue of subcontracting and past practice has been addressed in numerous previous awards. In Third Division Award 28558 which also involved contracting out fencing work, the Board stated:

"We need not address the issue of whether or not the work is covered by the Scope Rule or practice. Rather, we are compelled to follow the principles in the Third Division Awards 27010 and 27011, which both involved these parties. In each case, the Carrier established a history of contracting out work (construction of side tracks in Award 27010 and grading in Award 27011). In the first case, the Board held that '...while the work involved is arguably covered by the Scope Rule, Carrier had the right to contract the work under Rule 52 ....' because of the history of contracting".

See also Third Division Awards 29393, 28789, 28623, 28622, 28619, and 28610.

The Board has reexamined the arguments raised by the Organization in this matter and finds no evidentiary basis to alter the views expressed in the above cited Awards. It is our view that the numerous Awards involving identical issues and the same parties are well reasoned and dispositive of the issue at hand.

AWARD

Claim denied.

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of September 1994.