

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30754
Docket No. MW-30239
95-3-91-3-695

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Union Pacific Railroad Company (former
(Missouri Pacific Railroad)

STATEMENT OF CLAIM: "Claim of the System Committee of the
Brotherhood that:

(1) The Agreement was violated when the Carrier assigned outside forces (Marlatt Contracting) on September 13, 1990 to remove crossing planks, crossties and old ballast and replace same on the highway crossing at Mile Post 527 and on September 14, 1990 to push weeds and brush away from road crossings between Mile Post 490 and Mile Post 488 (Carrier's File 910090 MPR).

(2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it failed to furnish the General Chairman with advance written notice of its intention to contract out said work.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Omaha Division Machine Operator J. L. Hardenberger shall be allowed thirteen (13) hours' pay at his straight time rate."

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.

Under date of July 17, 1990, the Carrier provided notice to the General Chairman of its intention to contract work at crossing on Highway No. 128 on the Concordia Subdivision, together with removal of weeds and brush in connection therewith. The matter was discussed at conference with the General Chairman on July 23, 1990. No agreement being reached, the Carrier proceeded to contract the work.

Four previous Awards on the property are cited in connection with the contracting of crossing work. In contrast to the dispute here under review, all four Awards concerned instances in which no advance notice was provided to the General Chairman, and the Claims were sustained on this basis alone. No monetary remedy was provided in these instances, based to some extent on the Organization's failure to protest numerous previous instances of contracting the same work. Third Division Award 29677, however, also examined the merits of the dispute, concluding as follows:

"The record in this case demonstrates a mixed practice on this property with respect to the work in question. It has apparently been performed by members subject to the Agreement in the past but has also apparently been contracted out by the Carrier in the past. Thus, while the work could, based on the record before us, be contracted out under the provisions of Article IV [of the May 17, 1968 National Agreement], the Carrier is required to give notice before doing so."

The facts here persuade the Board that this reasoning is equally applicable to this claim. Since advance notice was provided, a denial Award becomes appropriate.

AWARD

Claim denied.

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.

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By Order of Third Division

Dated at Chicago, Illinois, this 24th day of February 1995.