

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31039  
Docket No. MW-30384  
95-3-92-3-125

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO 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 outside forces (Neosho Construction Company) to construct a concrete box culvert at Mile Post 179.34 on the Kansas Division commencing November 1, 1990 and continuing (System File S-439/910201).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper advance written notice of its intention to contract out said work and failed to make a good-faith attempt to reach an understanding concerning said contracting as required by Rule 52(a).
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Roadway Equipment Operators L. J. Doebele and V. A. Ratcliff and furloughed B&B Carpenters E. F. Zimmerman, R. R. Newman, S. Hicks and D. G. Hogan shall each, at their respective rates of pay, be compensated an equal proportionate share of the total number of man-hours expended by the contractor's forces commencing November 1, 1990 and continuing until the violation ceased to exist."

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.

With respect to the kind of work involved in this dispute, this Board has held that the Carrier can contract out such work. See Third Division Award 31035 and Awards cited therein. The problem in this case is with the Carrier's notification to the Organization of its intent to contract out the work.

As the parties recognize, the facts in this record are confusing. It is not clear precisely where the disputed work was performed or precisely when it was performed. What is clear, however, is that the work performed by the contractor commenced before notice (if there was notice) was given by the Carrier of its intent to contract out the disputed work.

In light of the confusion in the record, and further considering the conclusionary contentions supporting the Carrier's emergency argument, we do not find that the record sufficiently supports an assertion that the work was of an emergency nature so as to excuse the Carrier's obligation to give notice under Rule 52(a).

Due to the Carrier's failure to give the required notice under Rule 52(a), the matter is remanded to the parties to specifically determine, through examination of the relevant Carrier records, the precise nature of the work in dispute, when the contractor performed the work, and the duration and extent of that work. Make whole relief shall be limited to Claimants for periods, if any, they were on furlough when the work was performed by the contractor.

#### AWARD

Claim sustained in accordance with the Findings.

Form 1  
Page 3

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**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 1st day of September 1995.