

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31040
Docket No. MW-30387
95-3-92-3-132

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
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(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 (Modern Roofing and Insulation Company) to install a rubber membrane roof over the existing roofing on the west half of Building B-30 at Pocatello, Idaho on November 5, 6, 7, 8 and 9, 1990 (System File S-449/910247).
- (2) The Agreement was further violated when the Carrier failed and refused to timely meet with the General Chairman and 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, furloughed B&B Carpenters F. L. Parker and M. S. Tilley shall each be allowed eighty (80) hours' pay at the carpenter's rate of pay."

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.

Without giving the Organization prior notice of its intent to do so, the Carrier contracted out the replacement of a rubber membrane roof at the Bearing-Air Room Building at Pocatello, Idaho to Modern Roofing and Insulation Company. The work was performed by the contractor on November 5-9, 1990.

For reasons discussed in Third Division Award 31030, the claim must be sustained because the Carrier failed to give notice to the Organization of its intent to contract out the work as required by Rule 52(a) ("In the event the Company plans to contract out work because of one of the criteria described herein, it shall notify the General Chairman of the Organization in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than fifteen (15) days prior thereto") [emphasis added].

Third Division Award 30100 does not require that the claim be denied. There, the Board was satisfied that the Carrier met its notice obligations under Rule 52(a) ("... [T]he Board is satisfied that ... the letter of September 15, 1988, to the General Chairman met the requirements of Rule 52 for supplying adequate notice."). Here, the Carrier concedes that it did not give notice ("No notice was served in this case.").

For the same reasons discussed in Award 31030, we reject the Carrier's emergency argument. The record shows that the Carrier was well aware of the condition of the roof far in advance of the work being contracted out. This was no emergency.

Finally, and again for the same reasons discussed in Award 31030, monetary relief shall be awarded only if Claimants were on furlough. Claimants' backpay entitlements, if any, shall be determined upon a joint check of the Carrier's records concerning Claimants' status when the work was performed by the contractor.

AWARD

Claim sustained in accordance with the Findings.

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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.