

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31172
Docket No. MW-30789
95-3-92-3-575

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(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 (Gilbert Central Corporation) to perform Maintenance of Way and Structures Department work (setting forms, tying rebar, pouring and finishing concrete, installing anchor bolts in concrete, removing forms and cleaning debris) at the Eastbound Locomotive Servicing Facility in North Platte, Nebraska beginning on February 18, 1991 and continuing (System File S-511/910535).
- (2) As a consequence of the violations referred to in Part (1) above, Group 3 Foreman K. E. Peterson and B&B Carpenters D. T. McIntosh, R. K. Hughes, J. P. Nila, J. W. Gurwell, J. B. Martinez and J. A. Meyer shall each be allowed compensation, at their respective rates of pay, for the loss of work opportunity suffered for an '*** equal proportionate share of the man hours worked by the employees of the outside contracting force from February 18, 1991 ... and continuing until this violation of the Agreement no longer exists. ***'"

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.

This dispute arises out of the Carrier's use of outside forces to perform concrete work as part of a large scale remodeling project on a locomotive service facility in North Platte, Nebraska. While the Organization argues that the Carrier did not serve notice in this case until February 26, 1991, after the concrete work had begun on February 18, 1991, the claim does not include an allegation of a notice violation, and the record reflects that notice was initially served covering concrete work on this project on June 13, 1990, and was conferenced on July 16, 1990. Thus, there is no valid contention before this Board that the notice provisions of Rule 52(a) were violated.

The record in this case demonstrates a mixed practice on this property with respect to the concrete construction work in question, which has been confirmed in prior Awards of the Board. Third Division Awards 30287, 30262 and 28623. Numerous decisions of the Board have held that the Carrier has the right to contract out work under Rule 52(b) and (d) where advance notice is given and the Carrier has established a mixed past practice. We conclude that the Carrier did not violate the Agreement when it contracted out the work.

AWARD

Claim denied.

ORDER

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

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of September 1995.