

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 31227  
Docket No. MW-30874  
95-3-92-3-704

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers 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 or otherwise permitted outside forces to perform fence work (remove old fence, construct and repair right of way fence) on the north side of the track between Mile Posts 912.45 and 915.20 and on the south side of the track between Mile Posts 912.45 and 914.68 near Millis, Wyoming, on April 29 through May 22, 1991 (System File S-533/910672).
- (2) The Agreement was further violated when the Carrier assigned or otherwise permitted outside forces to perform fence work (remove old fence, repair and construct right of way fence) on the north side of the track between Mile Posts 842.75 and 846.30 and on the south side of the tracks between Mile Posts 830 and 834.80 on May 29 through June 20, 1991 (System File S-535/910690).
- (3) The Agreement was further violated when the Carrier assigned or otherwise permitted outside forces to perform fence work (remove old fence, repair and construct right of way fence) on the south side of the tracks between Mile Posts 853 and 863.50 beginning June 17, 1991 and continuing (System File S-536/910691).

- (4) As a consequence of the violation referred to in Part (1) above, B&B Foreman P.C. Curby and Laborers G. V. Griego, N. H. Trujillo and I. Caro shall each be allowed '\*\*\* compensation for an equal proportionate share of all man hours worked by the outside contracting force from April 29 through May 22, 1991. This compensation must be at the respective straight time and applicable overtime B&B Foreman and Laborers rates of pay.'
- (5) As a consequence of the violation referred to in Part (2) above, B&B Foreman P. C. Curby, Carpenters C. M. Tipsword, R. M. Galik, J. W. Lamons and Laborers G. V. Griego, N. H. Trujillo and I. Caro shall each be allowed '\*\*\* compensation for an equal proportionate share of all man hours worked by the outside contracting force from May 29, 1991 through June 20, 1991. This compensation must be at the respective straight time and applicable overtime B&B Foreman, Carpenters and Laborers rates of pay.'
- (6) As a consequence of the violation referred to in Part (3) above, B&B Foreman P. C. Curby, Carpenters C. M. Tipsword, R. M. Galik and J. W. Lamons shall each be allowed '\*\*\* compensation for an equal proportionate share of all man hours worked by the outside contracting force from June 17, 1991 ... and continuing until this violation no longer exists. This compensation must be at the respective straight time and applicable overtime B&B Foreman and Carpenters rates 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.

Claimants have established and hold seniority within different classes of the Carrier's B&B Subdepartment.

This claim arose when the Carrier assigned outside forces to perform right of way fencing construction and repair work along its tracks near Millis, Wyoming, beginning April 29, 1991, and continuing. The Organization took exception to the use of an outside contractor and filed separate claims on behalf of the Claimants, arguing that the work that was performed by the subcontractor was work that had been "customarily and historically" performed by the Carrier's Maintenance of Way Department forces. The claims were combined into one claim filed with the Board. The Organization contends that "... the Claimants were fully qualified, capable, willing and available to perform all of the fencing work involved here and would have readily done so had the Carrier assigned them thereto."

The Carrier denied the claims arguing that the fences were originally built by the Wyoming ranchers who had leased the land from the Carrier. The Carrier contends that the work that was performed by the ranchers was a "... condition of their lease arrangement." The fencing work was "... arranged by the ranchers and performed by contractors working for them or by the ranchers themselves." Furthermore, the Carrier contends that the Claimants suffered no loss because each was fully employed throughout the time periods covered by the claims.

This Board has reviewed the extensive record in this case and we find that the Organization has not met its burden of proof that the Carrier violated the Agreement when it assigned the outside forces to perform fence work at the location set forth in the claim.

The Carrier has made available numerous Awards from this Board, all of which hold that this Carrier has established a long history of contracting out the work involved in the construction of fences. The ability of this Carrier to contract out construction work on fences has been upheld in Third Division Awards 29393, 28789, 28558, 30004, 30007, and 30008. Those awards were subsequently relied upon in the more recent Awards 30163 and 30165.

There is nothing about this case that in any way supports the Organization's argument that this Board should violate the principle of *stare decisis* and start a whole new line of decisions.

The only Award relied upon by the Organization is Award 29916 which states in its final paragraph, "...in view of the peculiarly convoluted fact pattern and unique evidentiary problems presented in this case, the Board's findings and award are restricted to the instant case."

For all of the above reasons, this Board must deny the claim.

AWARD

Claim denied.

ORDER

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 1st day of November 1995.