

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31271  
Docket No. MW-28262  
95-3-87-3-827

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 (former  
( Missouri Pacific Railroad Company)

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

- (1) The Carrier violated the Agreement when it assigned outside forces to perform painting work at the depot in Russellville, Arkansas from March 31, 1986 through April 4, 1986 (Carrier's File 247-7433).
- (2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it did not give the General Chairman advance written notice of its intention to contract said work.
- (3) As a consequence of (1) and/or (2) above, B&B Foreman J. H. Duggin, B&B Carpenters A. L. Howell, D. J. Booker and Motor Car operator D. L. Boyd shall each be allowed pay at their respective straight time rates for an equal proportionate share of the one hundred two (102) man-hours expended by the outside forces to perform the above-mentioned work."

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 prior notification to the Organization, the Carrier contracted out painting duties at the depot at Russellville, Arkansas.

The on-property handling shows (without contradiction) that in the past the Carrier has contracted out similar work without protest from the Organization. That showing prevents the Organization from prevailing on its argument that the Carrier was precluded from contracting out the work.

However, the Carrier failed to give the Organization advance notice of its intent to contract out the work as is required. The function of the notice is to allow the Organization the opportunity to convince the Carrier to not contract out the work. That opportunity was prevented by the Carrier's failure to give notice. The claim will therefore be sustained, but only for those Claimants in furlough status, if any, at the time the contractor performed the work.

#### AWARD

Claim sustained in accordance with the Findings.

#### 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 19th day of January 1996.