

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31273  
Docket No. MW-29994  
95-3-91-3-385

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 Employes  
(  
(Union Pacific Railroad Company (former  
( Missouri 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 (Gilliam Railroad Services) to recover old crossties from the right of way between Mile Posts 415 and 422 in the vicinity of Roper, Kansas on January 18, 1990 (Carrier's File 900314 MPR).
- (2) The Agreement was further violated when the Carrier failed and refused to furnish the General Chairman with advance written notice of its intention to contract out said work as required by Article IV of the May 17, 1968 National Agreement.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Machine Operators K. D. Eichelberger and P. N. West shall each be allowed ten (10) hours of pay at their respective time and one-half rates."

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 notice to the Organization, the Carrier contracted out the picking up of cross ties which was done in conjunction with a tie renewal project performed by Claimants and other members of District Tie Gang # 9161. According to the Organization, the contractor performed the work on January 18, 1990, which was Claimants' assigned rest day.

With respect to the merits of the contracting out claim, no merit to that assertion has been shown. The record sufficiently establishes that in the past the Carrier has contracted out similar work which has been acquiesced to by the Organization.

The Organization's argument that the Carrier violated the advance notice requirements is moot. Under the circumstances, the failure to give notice would only require relief for employees who were on furlough at the time the contractor performed the work. Here, the record shows that Claimants were not in furloughed status but were on their rest day. Therefore, no affirmative relief can be granted.

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 19th day of January 1996.