

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31277
Docket No. MW-30190
95-3-91-3-636

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 pick up old cross ties from the right of way from Mile Post 160 to Mile Post 168 in the vicinity of California, Missouri on Saturday, August 4 and Sunday August 5, 1990 (Carrier's File 900707 MPR).
- (2) The Agreement was further violated when the Carrier failed 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, Western District Tie Gang Machine Operators R. E. Kautz, E. A. Kramer and S. R. Judd shall each be allowed sixteen (16) hours of overtime pay at their respective machine operator's 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.

The Organization asserts that, without advance notice, the Carrier improperly contracted out the picking up of old cross ties on August 4 and 5, 1990.

With respect to the notice question, the record reveals that by letter dated February 3, 1990, the Carrier provided the Organization with notice of an "... intent to solicit bids to contract the unloading of cross and switch ties and the pick up and removal of scrap ties and debris for Carrier's Tie Program." The Carrier further asserted on the property that a conference occurred concerning that notice. The Organization asserted on the property that it has "... been unable to locate such notice and can find no record as to ever receiving or conference it." Given that the Organization has the burden of demonstrating all the elements of its claim, in light of the Carrier's demonstration, this Board cannot find as the Organization asserts that advance notice was not given.

With respect to the merits of the dispute, in the past the Carrier has contracted out similar work which has been acquiesced to by the Organization.

Under the circumstances, the claim will be denied.

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.