

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 31283  
Docket No. MW-30385  
95-3-92-3-131

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

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

- (1) The Agreement was violated when the Carrier assigned outside forces (Truck Construction) to construct a metal shed at LaGrande, Oregon from October 22 through November 28, 1990 (System File S-448/910248).
- (2) The Agreement was further violated when the Carrier failed and refused to timely met with the General Chairman and make a good-faith attempt to reach an understanding concerning said contracting as required by Rule 52(a).
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, furloughed B&B Carpenters D. B. Eisenbarth and D. L. Francois shall each be allowed thirty-two (32) hours' pay at the First Class Carpenter's rate 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.

Without prior notice to the Organization, the Carrier contracted out the construction of a metal shed at LaGrande, Oregon.

With respect to the Carrier's ability to contract out this kind of work, Awards addressing the Carrier's right to do so have denied similar claims by the Organization. Third Division Awards 30199, 29611. Those Awards are not palpably in error and shall be followed.

However, the Carrier did not give advance notice of its intent to contract out the work as required by Rule 52. Notwithstanding the Carrier's ability to contract out this type of work in light of the established practice of doing so and the Organization's acquiescence therein, Rule 52(a) obligates the Carrier to give the Organization advance notice of its intent ("In the event the Company plans to contract out work ... it shall notify the General Chairman ... as far in advance of the date of the contracting transaction as is practicable and in any event not less than fifteen (15) days prior thereto ...."). 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. In order to remedy the notice violation, the claim will therefore be sustained, but only for those Claimants in furlough status at the time the contractor performed the work.

There appears to be a dispute concerning the number of hours the contractor performed the work and the status of the named Claimants. The matter is therefore remanded to the parties for a joint check of the Carrier's records to determine the number of hours the contractor performed the work, whether Claimants were on furlough, the length of any such furloughs and whether those furloughs overlapped the time the contractor performed the work in dispute. Only the furloughed Claimants holding seniority at the time the contractor performed the work shall be entitled to relief. Those furloughed Claimants shall be made whole for the number of hours the contractor performed the work.

#### AWARD

Claim sustained in accordance with the Findings.

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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.