

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31649
Docket No. MW-31002
96-3-92-3-954**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(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 (Dan's Custom Fencing) to perform fence work [installed posts, strung fence, installed one (1) gate and strung barb wire on top of the chain link fencing] on the Montana Subdivision at Mile Post 186, Idaho Falls, Idaho on June 17 through July 10, 1991 (System File S-565/910737).**
- (2) The Agreement was further violated when the Carrier did not give the General Chairman proper advance written notice of its intent to contract out the work involved here in accordance with Rule 52.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, furloughed Carpenter F. L. Parker and Messrs. D. K. Naasz, K. L. Howard, J. D. Stevens, R. E. Baker and R. L. Young shall each be allowed ninety-six (96) hours of pay at their respective First Class Carpenter's and foreman's straight time 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.

This claim involves the contracting of fence work on the claimed dates in Idaho Falls. The Organization contends that the July 5, 1990 notice served was defective as it was issued over one year before the work was completed and failed to specify the exact location of the work and the reasons for the contracting. The record reveals that the July 5, 1990 notice specified the work as "construct fence in Idaho Falls yard", and was subject to a lengthy reply by the Organization and response from the Carrier. It also appears that the matter was conferenced. The Board finds that the notice was sufficient to meet the Carrier's Rule 52 obligation.

The ability of this Carrier to contract out fence construction work has been upheld in Third Division Awards 31227, 31034, 30469, 30167, 30165, 30163, 30008, 30007, 30004, 29393, 28789, 28558. This is true despite the fact of lack of notice. Third Division Awards 29393, 30167, 30004. Given the practice established on the property for the kind of contracting out involved in this case, there is no basis for determining that these Awards are palpably erroneous. In the interests of stability, we shall follow their holdings.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of August 1996.