

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31651  
Docket No. MW-31015  
96-3-92-3-958**

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 (Shurigar Construction Company and Neosho Construction Company) to perform Maintenance of Way Structures Department work (setting forms, tying rebar, pouring and finishing concrete, installing anchor bolts, removing forms and cleaning up debris) in connection with the construction of an extension to the existing concrete box culvert and retaining walls connected thereto at Mile Post 829.88 on the Wyoming Division on October 1, 2, 3, 4, 5 and 7, 1991 (System File S-604/920070).
- (2) The Agreement was further violated when the Carrier failed to timely meet with the General Chairman to discuss the work referred to in Part (a) above, prior to the contracting out of said work, as contemplated by Rule 52(a).
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Group 3 Carpenters J. W. Lamons, P. J. Kern, G. B. Roper, P. C. Curby, J. J. Callahan and R. E. Rondeau shall each be allowed compensation for the loss of work opportunity suffered for an `\*\*\*equal proportionate share of the man hours worked by the employees of the outside contracting force from October 1 through October 7, 1991.\*\*\*', at the Group 3 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.

This dispute arises out of the Carrier's use of outside forces to perform concrete culvert and retaining wall work. The record reveals that the Carrier gave notice of its intention to contract out such work on August 27, 1991, stating that it "will be available for a conference at a mutually agreeable time." By letter dated September 10, 1991, the Organization objected to the contracting, raised specific questions, and requested a conference prior to the commencement of the work. The Carrier responded to the Organization's concerns and expressed a willingness to meet in its September 24, 1991 reply, suggesting that the Organization put the matter on the agenda at their next conference on contracting notices. The matter was discussed in conference on October 2, 1991. The contracting in issue commenced on October 1, 1991, the day before the conference.

The ability of the Carrier to contract out concrete work under Rule 52(b) has been upheld in Third Division Awards 31172, 31035, 31029, 31028, 30287 and 30262. Given the practice established on this 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.

The Board concludes that the record in this case does not support the Organization's contention that the Carrier failed to live up to its good faith obligation to meet in conference prior to the work commencing. While the conference was, in fact, held the day after the work began, the Carrier notified the Organization at least 33 days prior to the contracting that it was available to meet in conference in its original notice of intent. Rather than attempting to arrange a conference within the 15 days' advance notice period required in Rule 52(a) in response to the Carrier's expressed willingness to meet, the Organization chose to wait almost two weeks to reply to the notice and requested a conference, rather than arranging a specific date for one to be held. These facts are far different from those relied upon by the Board in finding a Rule 52(a) violation in Third Division Award 31171. Under the circumstances of this case, we cannot say that the Carrier did not give the Organization adequate opportunity to schedule a conference prior to the commencement of work. See Third Division Award 31035.

**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.**