

CORRECTED

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31679
Docket No. MW-31727
96-3-94-3-4

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company (Eastern Lines)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned an employee of an outside concern (Pacer) to haul signal equipment (two (2) signal houses] from Houston, Texas to the Kirby Yard, Kirby, Texas on September 19, 1992 (System File MW-93-16/MW 93-19 SPE).
- (2) The Agreement was further violated when the Carrier failed to give the General Chairman proper advance written notice of its intention to contract out the work in question in accordance with Article 36.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Machine Operator J. E. Hasty, Jr. shall be compensated for eight (8) hours' pay at his pro rata straight time rate of pay and two (2) hours' pay at his time and one-half 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.

In Third Division Awards 31260 and 31266 involving the same parties in a like dispute, the Board found the Agreement was violated and the claims were sustained.

After a thorough review of the record in the instant case we find no basis to overturn the above-mentioned Awards.

In this case the Carrier makes the additional argument that the Claimant was fully employed, and as such is not entitled to a monetary award. However, we are persuaded that the circumstances exist which make a damage award appropriate. Refusing to make a monetary award would, in effect, condone the Carrier's violation.

AWARD

Claim sustained.

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 29th day of August 1996.