

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31930
Docket No. MW-31507
97-3-93-3-507**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE:(
(Union Pacific Railroad Company (former
(Missouri Pacific Railroad)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Marlatt Contracting) to perform Maintenance of Way machine operator's work (operating a backhoe) in connection with the hauling of stone and ties, installing ties and general cleanup at a derailment at various locations in the St. Joe Terminal, Lake Road and in the vicinity of Atchison, Kansas on March 2, 3, 6, 31, April 1, 2, 3, 6, 7, 8, 9, 10, 13, 14 and 15, 1992. (Carrier's File 920405 MPR).**
- (2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it failed to furnish the General Chairman with a proper advance written notice of its intention to contract out said work.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, furloughed Machine Operator K. D. Eichelberger shall be allowed eight (8) hours' pay at the machine operator's straight time rate for each day worked by the outside forces and any overtime expended by the outside forces at the machine operator's time and one-half rate of pay for each date claimed."**

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 were given due notice of hearing thereon.

In this dispute, the Carrier has denied both the notice violation as well as the substantive allegations associated with the contracting of work. It says notice was served. It also contended that the disputed work has traditionally been contracted out. Finally, it disputed the accuracy of the equipment used and hours claimed on the dates alleged in the claim.

The alleged notice violation cannot be sustained on this record. The parties' on-property correspondence reflects that Carrier, by its letter dated July 23, 1993, furnished the Organization with a copy of the notice as well as the Organization's letter dated March 23, 1992 confirming the conference. The Organization did not thereafter reassert any notice contentions prior to filing its Notice of Intent to progress the matter to this Board.

The substantive portions of the claim lack evidentiary support. Once the allegations of the claim, including their accuracy as to types of equipment, hours and dates of the work, were placed in controversy via the Carrier's denial, it was incumbent upon the Organization to prove such allegations by submission of probative evidence. The on-property record is devoid of such evidence. Even the Organization's contention that the work was begun before the notice was served has no evidentiary support.

It is well settled that the Organization bears the burden of proof to establish each element of the claim. On this record, that burden has not been satisfied.

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 4th day of March 1997.