

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32349
Docket No. MW-31891
97-3-94-3-169**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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 (Prairie Construction Company) to perform Steel Erection Subdepartment work (erecting a steel building at the Water Treatment Facility) at Council Bluffs, Iowa on December 3, 1992 and continuing (System File H-27/930245).**
- (2) The Agreement was further violated when the Carrier failed to provide advance written notice of its intention to contract out said work and failed to make a good-faith effort to reduce the incidence of contracting out scope covered work and increase the use of its Maintenance of Way forces as required by Rule 52(a) and the December 11, 1981 Letter of Understanding.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Eastern District Group 1 Steel Erection Welders R. L. Cade, D. D. Benson and T. C. Long shall each be allowed pay at their respective straight time and overtime rates of pay for an equal proportionate share of the total number of man-hours expended by the outside forces in the performance of the above-described work."**

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.

The Carrier contracted out steel construction work which was performed by employees of Prairie Construction Company over seventeen days. In that time frame, the outside contractor worked at the Water Treatment Facility in Council Bluffs, Iowa and erected a steel building. The Organization argues that the work performed was typical work of erecting steel columns, sheeting, attaching doors, windows and finishing. The Organization argues that this work was contracted out in violation of Rule 52 and the Scope Rule, as the work performed belonged to the employees. Specifically, the B&B Subdepartment Steel Erection employees have customarily and traditionally performed such work which was clearly contained within Rule 8. The assignment of Scope protected work to employees foreign to the Agreement without written notice was clearly a violation of the negotiated Agreement.

Numerous additional issues and argument are raised throughout this claim by the Organization in support of its position. This Board has carefully studied all of the arguments and the Carrier's detailed denials. We have reviewed the supporting documents, letters, pictures and Awards cited by both parties in this dispute. Notwithstanding all of the materials, the basic elements to support the claim were not found. The Board has studied the Agreement language and finds that the Scope Rule is a general Scope Rule. There is nothing in Rule 8 that provides exclusivity to the employees of this disputed work. Nor is there proof of system wide exclusivity. The Carrier provided sufficient evidence that contracting out of this instant work was practice on the property. The Board finds the Carrier's evidence compelling and thereby

covered by Rule 52, which permits the Carrier to continue such practice. Under the full record of this case the Agreement was not violated.

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 13th day of November 1997.