

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32350
Docket No. MW-31892
97-3-94-3-170**

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 (American Fence Company of Omaha, Nebraska) to perform Bridge and Building Subdepartment work (removal, repair and replacement of chain link fence and gates) at the Signal Department security area at Marysville, Kansas on November 4 and 5, 1992 (System File H-23/930233).**
- (2) The Agreement was further violated when the Carrier's advance written notice of its intention to contract out said work was improper and when it 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, Kansas Division B&B Group 3 Carpenters D. J. Bejan, S. M. McMullen and M. W. O'Toole shall each be allowed twenty-one and one-third (21 1/3) hours' pay at the Group 3 Carpenter's straight time rate for an equal proportionate share of the total number of man-hours expended by the outside forces on November 4 and 5, 1992.”**

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.

From the moment the Carrier issued its September 11, 1992 Notice of Intent to contract out the installation of a chain link security fence with gates, the Organization disputed the Carrier's rights to do so. Even before a conference on the Notice took place in October, 1992, the Organization argued that the work was absolutely controlled and assigned by Agreement to the B&B employees. Beginning with the Organization's September 17, 1992 letter and continuing until deadlocked on the property, the Organization argued that it was Scope protected and could not be contracted out under any of the five conditions of Rule 52. It disputed the Carrier's rights under Rule 52(b), as the Agreement reserved the work to the employees and therefore there could be no "prior or existing" right to the installation of fence work by forces foreign to the Agreement. Among the numerous other arguments, the Organization maintained that prior Awards (particularly Third Division Award 29916) and evidence supported its positions.

The Carrier argued that it had the Agreement right to perform the fence installation work in the manner disputed. The Carrier denied the exclusivity of the work and noted that the installation was properly contracted out within the Agreement Rules and by Notice. It also argued that the Awards cited in support by the Organization were not on point. The Carrier denied all aspects of this claim.

The Board has fully reviewed the large record before us with respect to both the merits (part 1 of the claim) and the procedural issue of Notice (part 2 of the claim). On procedure, there is no violation in this record. The Carrier notified the Organization

of its intent to contract out by letter of September 11, 1992; met in conference on October 6, 1992 and commenced work on November 4, 1992. A study of the Notice finds no deficiencies that would be a violation of the Agreement.

On merits, the work involved herein has been reviewed. This Board has studied all of the Organization's arguments, evidence, and Awards of record provided herewith. There is no support in this record for a finding that the Carrier violated the Agreement. In fact, after study of the numerous Awards, we can find nothing substantive that would suggest a deviation from prior findings of denial. On the basis of this entire record, the Board holds that there is a clear and unmistakable history providing Agreement right for the Carrier to contract out the work of installing fences. The Board finds recent Awards on this very issue (Third Division Awards 31227, 31034), as well as numerous past Awards holding the same (Third Division Awards 30167, 30007, 30004, 28558, 28789 and 29393). After full review, the Board must deny the claim.

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.