

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32355
Docket No. MW-31955
97-3-94-3-240**

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

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(Union Pacific Railroad Company (former Missouri
(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 (Marlatt Contracting) to perform Maintenance of Way machine operator's work (operating an 880 Backhoe, D-3 Dozer and a 955 Cat Loader) in connection with the removal and installation of new culverts and the removal of a bridge in the vicinity of Mile Posts 358.8 and 299.5 on the Old Omaha Division on November 9, 10, 11 and 18, 1992 (Carrier's File 930255 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, Machine Operators K. D. Eichelberger and M. L. Fitzgerald shall each be allowed eight (8) hours' pay at the machine operator's straight time rate and any overtime at the machine operator's time and one-half rate for each day worked by the outside forces.”**

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.

By letter dated January 7, 1993, the Organization filed the instant claim alleging that the Carrier had contracted out for assistance in the removal of a bridge and the removal and installation of new culverts. The Organization argued that the work was of the type customarily and traditionally performed by the employees. It maintained that the Carrier's actions violated the Scope of the Agreement among other Rules, in that it took work that had belonged to the employees and contracted it to outsiders. The Organization argued that for economic reasons, the Carrier had taken this non-emergency work and instead of bulletining the position, it violated the Agreement.

The Carrier's response to the claim was to point out that it had properly served a Notice of Intent on July 24, 1992 as required. It had also conferenced the issue on July 28, 1992 without resolution. It had thereafter properly utilized the outside contractor as it lacked the equipment and skilled manpower. The Carrier pointed out that there was a longstanding practice of subcontracting the type of work herein at issue. As such, the Carrier maintained that it had not violated any Rule or Agreement.

The Board has carefully studied this record and the relevant issues relating to Notice, subcontracting, Rules, issues of obtaining proper equipment, and the availability of qualified manpower. We find that while there was an error in location made by the Carrier in the Notice of Intent, it is not fatal. The listing of the wrong mile post number was never shown to be of any relevance. We find no argument advanced in the record that the exact location was not discussed in conference or that any material difference

in the handling of this case to the advantage of the Carrier resulted. As such, the Board fails to find the Notice procedurally deficient.

On merits, the petitioner has argued that the work is covered by the Scope of the Agreement. The Organization has failed to demonstrate that fact. There is a lack of probative evidence to prove that the Carrier was without the right to move forward in the manner complained of in this dispute. The Carrier stated that there was a long historical record of contracting out this type of work. The Board's review of this case fails to find evidence to refute the Carrier's position. The Organization has failed to prove that the Carrier has been restricted by any Agreement Rule from the use of an outside contractor's employees and equipment in these instant circumstances.

On the basis of this full record, the claim cannot be upheld. There is a long list of Awards that have similarly found that the Carrier is not restricted from contracting out under these instant Rules and facts (Third Division Awards 28849, 30842, 31274, 31277, 31955).

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.