

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32629
Docket No. MW-31766
98-3-94-3-21**

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(Brotherhood of Maintenance of Way Employes
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 used outside forces (L. J. Webb, Sam and Shurigar Construction Companies) to build a berm and roadbed and related grading work between Mile Post 257 and Mile Post 262.5 near Hastings, Nebraska on the Kansas Division beginning October 12, 1992 and continuing (System Files H-14/930219 and H-15/930220).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper advance written notice of its intention to contract out said work and violated the December 11, 1981 Letter of Understanding when it failed to make a good-faith effort to reduce the incidence of contracting out scope covered work and increase the use of their Maintenance of Way forces.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Roadway Machine Operators C. L. Guthmann, R. L. Wehrer, D. L. Ditch, P. D. Birch, J. T. Small, D. D. Zulkoski, L. H. Cudney, furloughed Kansas Division employes K. K. Peacock and R. J. Manley, furloughed Wyoming Division employe D. A. Dimas and furloughed Nebraska Division employe J. J. Pickrell shall each be allowed an equal proportionate share of the total straight time and overtime man-hours worked by the outside contracting forces performing the above-described work at their respective roadway**

equipment operator, sectionman, welder helper and laborer's straight time and overtime rates 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 were given due notice of hearing thereon.

During the claim handling procedure, the Organization contended that proper notices of two instances of proposed contracting were not sent to the General Chairman. The record supports the Carrier's assertion that notices were sent and that conferences were held, with the work involved commencing after completion of the conferences.

The Organization characterizes the contracted work as "building a berm and roadbed and related grading work." Third Division Award 30193, among others, disposed of a claim involving similar work, as follows:

"Numerous decisions of the Board have held that the Carrier has the right under Sections (b) and (d) to contract out work where advance notice is given and the Carrier has established a mixed past practice of contracting out work similar to that involved in the dispute. The record in this case demonstrates a mixed practice on this property with respect to the work in question. It has been performed by members subject to the Agreement in the past but has also been contracted out by the Carrier in the past. We thus conclude that the Carrier did not violate the Agreement when it contracted out the work."

This reasoning is fully appropriate to the dispute here under review.

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 23rd day of June 1998.