Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 33420
Docket No. MW-32426
99-3-95-3-314

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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 assigned outside forces (Wyoming Efficiency Contractors) to perform excavating and concrete construction work in the Provo Yard in Provo, Utah on November 8, 9, 10, 11, 12, 29, 30, December 1, 2 and 3, 1993 (System File C-10/940190).

(2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper advance written notice of its intention to contract out the work cited in Part (1) above and failed to make a good-faith effort to reduce the incidence of contracting out the scope covered work and increase the use of their 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, Utah Division B&B foreman D. W. Roper, furloughed B&B Carpenter T. J. Murray and B&B Carpenters L. F. Rowsell and D. C. Jones shall each be allowed eighty (80) hours' pay at the applicable B&B Foreman's and First Class Carpenter's rates."

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 Organization alleges that the Notice of Intent herein filed by the Carrier on July 5, 1993 was "procedurally inadequate and/or defective." It further declares that the Carrier's actions were inconsistent with Rule 52 and the December 11, 1981 Letter of Understanding with regard to contracting out.

The substance of the Organization's argument is that the Notice was deficient in failing to indicate when the work would begin, when it would end, the exact location of the work and a detailed discussion of what work would be performed. Additionally, the Organization contends that the contracting Notice was lacking in accuracy and substance in failing to note that the work was Scope protected; identifying employee skills that were lacking and equipment and materials that could not be obtained; and documenting why the work was not being given to the employees. The Organization argues that the lack of explanation for why such work was contracted out or any emergency violates the Agreement and Letter of Understanding of a good-faith effort to reduce subcontracting. Accordingly, the Organization files claim for the utilization of outside forces on stated dates in November and December 1993, for excavating and concrete construction at the Provo Yard in Provo, Utah.

The Board has carefully studied the Organization's allegations, its extensive correspondence and Award support, as well as the Carrier's denials with the following conclusion. There is no proof in this record that the work was Scope protected. There is a lack of proof that the work has belonged exclusively to the employees or violates Rule 1 (Scope) of the Agreement. On the contrary, the Rule language does not direct the Board to that conclusion and nor is there evidence to deny prior subcontracting. The Board has also considered the Organization's position with regard to Rules 8, 9, and 10, but concludes they are not on point with proof of any Carrier violation in this instant case.

Rule 52 is also alleged, but not proven with sufficient evidence to have been violated. Section (b) protects prior and existing practices of contracting out and section (d) permits the Carrier "to assign work not customarily performed" by the employees. The Board fails to find proof to support the Organization's position that this work was customarily performed by the employees or demonstrate that the Carrier had not contracted out this same work in prior years (Third Division Awards 28850, 28622, 28619, 28558, 29309, 27010). In fact, we find the opposite; that this type of work has historically been contracted out, as well as been performed by the employees (Third Division Awards 30869, 30690, 30262, 30193, 30185).

We have fully reviewed the facts, issues and evidence at bar. We find this issue to be the same basic issue as that which was decided in Third Division Award No. 32333. Although this instant concrete work involved concrete installation and finishing for floors and containment walls for an oil separator and another tank at a fueling facility, it is essentially the same. The claim is denied following the doctrine of stare decisis. There is no proof of a violation of the Agreement.

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 July 1999.