

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38953
Docket No. MW-37346
08-3-NRAB-00003-020234
(02-3-234)

The Third Division consisted of the regular members and in addition Referee Dennis J. Campagna 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 (Nielson Construction Company) to perform Maintenance of Way work (operate equipment to perform dirt work, cleanup, dressing slopes and placing rip-rap on creek banks) in the vicinity of Mile Post 2.66 on the Sunny Side Branch in the vicinity of Price, Utah commencing on November 26 and continuing through December 5, 2000, instead of Roadway Equipment Operators F. D. Ward, A. T. Matthews, S. P. Larsen and O. R. Ratliff (System File D-01-05C/1259844).
2. The Agreement was further violated when the Carrier failed to furnish the General Chairman with an advance written notice of its intention to contract out said work and failed to make good 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 and the December 11, 1981 Letter of Understanding.
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant F. D. Ward shall be compensated for forty-one (41) hours' pay at his respective time and one-half rate of

pay, Claimant A. T. Matthews shall be compensated for twenty-one (21) hours' pay at his respective straight time rate of pay and four (4) hours' pay at his respective time and one-half rate of pay, Claimant S. P. Larsen shall be compensated for twenty-four hours' pay at his respective straight time rate of pay and six (6) hours' pay at his respective time and one-half rate of pay and Claimant O. R. Ratliff shall be compensated for eight (8) hours' pay at his respective time and one-half rate 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.

Beginning November 26 and continuing through December 5, 2000, the Carrier assigned an outside contractor to restore a bridge that had been destroyed by fire. The circumstance giving rise to this work was aptly described by the Carrier as follows:

"As a result of my investigation into the merit of your claim, this work was associated with a fire that destroyed a bridge on the Sunny Side Branch. This branch is the track that leads to the LandFill for ECDC, which disposes of the trash for the City of Salt Lake, and is rail served. This was an extreme emergency: the bridge had to be replaced ASAP, and the Carrier did not have the machinery to do the work of

replacing the bridge. The Claimants were working their normal positions and were not laid off nor affected by this."

The Organization did not effectively dispute the factual scenario noted above, but rather maintained that because work of this nature has been customarily, historically and traditionally assigned to and performed by employees represented by the Organization, and given that the Claimants were willing and able to perform the work at issue, the instant claim is legitimate and should therefore be upheld. In addition, the Organization maintains that the Carrier failed to provide notice to the General Chairman at least 15 days in advance of its intent to contract out such work and accordingly, the Carrier violated Rule 52. Rule 52 provides that the Carrier may contract out Maintenance of Way work "customarily performed by employees covered by this Agreement" when, among other circumstances, "emergency time requirements exist which present undertakings not contemplated by the Agreement and beyond the capacity of Company's forces."

In the instant matter, the Carrier asserts that under the facts of this case it was not under any obligation to provide the General Chairman with the foregoing Rule 52 notice because of the existence of a genuine emergency. A review of Third Division Awards supports the conclusion that any claimed emergency must be bona fide where time is of the essence thereby rendering the Carrier's obligation to supply a Rule 52 notice impractical given the exigencies that then exist. Accordingly, it must be determined if a genuine "emergency" existed at the relevant time period. (See Third Division Award 20527.)

The Board reviewed the record and finds that the circumstances giving rise to the disputed work constituted an emergency. In this regard, time was of the essence in rebuilding the destroyed bridge that provided access to a land fill used for the disposal of trash for the City of Salt Lake. Accordingly, because, as noted above, Rule 52(c) provides that the Carrier need not provide notice to the Organization when it contracts out work associated with an emergency, no violation of Rule 52(c) occurred and the Carrier had no contractual obligation to utilize its own forces to replace the bridge. (See Third Division Awards 29965, 29999, 30000 and on-property Award 32097.)

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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 29th day of February 2008.