

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26375
Docket Number MW-25958

Eckehard Muessig, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Denver and Rio Grande Western Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it assigned outside forces to perform subgrade work between Rubideau and Huff on the North Fork Branch beginning on December 19, 1982 (System File D-7-83/MW-21-83).

2. Because of the aforesaid violations, Rock Subdepartment employees P. Holland, M. McCoy, R. Wyckoff shall each be allowed pay at their respective rates for an equal proportionate share of the man-hours expended by outside forces in preparing, drilling, blasting and scaling beginning on December 19, 1982."

OPINION OF BOARD: This is a "contracting-out" dispute which came about after the Carrier assigned outside forces to perform work on its grades commencing on December 19, 1982. The Organization contends that this work is reserved to its forces. It asserts that the Carrier violated Rules 1, 2, 3 and 4 of the parties' Agreement and particularly Article IV of the May 17, 1968, National Agreement as well as the Letter of Agreement, dated December 11, 1981.

The Board notes that the key issues and the relevant events leading to this Claim are identical to those resolved in previous Awards, covered by the identical Agreement language and issues. (See Third Division Awards Nos. 25677, 25141 and 25103.)

This Board again associates itself with the position that resolution of disputes between the same parties concerning the same basic issues and Rules should not be disturbed unless it is determined that the initial Award(s) were palpably erroneous. We do not so find here. Accordingly, the Claim is sustained in the same manner as was done in Third Division Award 25677:

"Claim for each named Claimant is sustained for wage loss suffered, i.e., the named Claimant's proportionate share of time when added to his straight-time compensable time for period involved shall be limited so as not to exceed the total of his normal compensable time."

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1987.