

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26547  
Docket Number MW-26372

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(Southern Pacific Transportation Company  
(Eastern Lines)

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

(1) The Carrier violated the Agreement when, beginning January 30, 1984, it assigned outside forces to pick up and distribute cross ties between Garrison and Nacogdoches, Texas (System File MW-84-44/414-86-A).

(2) The Carrier also violated Article 36 when it did not give the General Chairman advance written notice of its intention to contract out said work.

(3) Machine Operators C. E. Bass and L. E. Benton shall each be allowed two hundred eight (208) hours of pay at their respective straight time rates and fifty-two (52) hours of pay at their respective time and one-half rates because of the aforesaid violations."

OPINION OF BOARD: In January, 1984, Carrier contracted with Pat Harris Contracting for two men and a tie crane to remove defective crossties from the right of way. Carrier did not notify the General Chairman (as is required by Article 36 of the controlling Agreement) of its intent to subcontract. The outside forces performed 108 hours of straight-time work and 52 hours of overtime work. Petitioner contends that Carrier violated Article 36 of the Agreement; consequently, it claims 208 hours at straight-time and 52 hours at time and one half for two Machine Operators.

Carrier denied the Claim on the basis that Claimants were not furloughed and in such a situation this Board has not made monetary awards to Claimants.

The Board has reviewed the record and the many Awards by both sides to support their respective positions. It is our opinion in this instance that Carrier knowingly violated the Agreement by not notifying the General Chairman and should not be allowed to hide behind the fully employed status of Claimants to hold it harmless from compensation.

This Board has been confronted with similar situations in the past and on occasion has awarded fully employed Claimants compensation (see Third Division Award 23203). We therefore will award each Claimant in this instance 52 hours at the overtime rate.

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

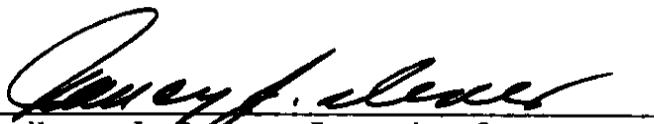
That the Agreement was violated.

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 30th day of September 1987.