

The Third Division consisted of the regular members and in addition Refere Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Union Pacific Railroad Company

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

(1) The Agreement was violated when outside forces were used to perform grading and related work in connection with construction of new side tracks at Brockoff, Eastwood, Northport and Ruthton, Nebraska beginning October 18, 1983 (System File 7-27-13-14-54/013-210-52).

(2) Because of the aforesaid violation, furloughed Machine Operators J. T. Solt, C. A. Hintz, R. J. Lasslet, R. A. Gilbert, R. S. Hutchinson, J. H. Scott, R. D. Collins and C. A. Schwisow shall each be allowed pay at the Group 20 Roadway Equipment Operator's rate for an equal proportionate share of the total number of man-hours expended by outside forces in performing the work referred to in Part (1) hereof."

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 employees 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 waived right of appearance at hearing thereon.

Beginning on October 18, 1983, Carrier contracted with an outside company to perform grading and related work in connection with the construction of new side tracks at Brockoff, Eastwood, Northport and Ruthton, Nebraska. The work consisted of transporting, grading and compacting dirt with the use of four (4) rubber tired scrapers, two bulldozers, a tractor and a grader patrol. The Organization contends that such work has customarily and historically been performed by the Carrier's Roadway Equipment Operators and is contractually reserved to them under the provisions of Rules 1, 2, 3, 4 and 10 of the current Agreement.

There is no dispute that Carrier provided the requisite notice of its intent to subcontract pursuant to Rule 52 on September 30, 1983. Carrier asserts, however, that since no response to the notice was received, and in view of the limited time remaining before inclement weather would prevent the progression of the work, Carrier properly contracted out the work on October 18, 1983. Nothing was forthcoming from the Organization until the instant claim was filed, and therefore the Carrier concludes that it did not violate the Agreement.

The Board has reviewed the record carefully and indeed finds no evidence that the Organization requested a meeting to discuss Carrier's intent to contract out the disputed work. While this presents an interesting question, it is one that will not be entertained by the Board since the evidence adduced also reveals that the issue was not raised on the property.

Carrier further argues that the Organization has failed to fulfill its burden of proof in view of the past practice on the property. We agree. Carrier's Exhibit 14 sets forth 26 instances of contracting out of similar work over the past thirty years. Moreover, the Organization concedes that the work has been contracted out in the past. Under these circumstances, while the work involved is arguably covered by the Scope Rule, Carrier had the right to contract the work under Rule 52 of the Agreement which provides in pertinent part:

"(b) Nothing contained in this rule shall effect prior and existing rights and practices of either party in connection with contracting out.

(c) Nothing contained in this rule shall impair the Company's right to assign work not customarily performed by employees covered by this Agreement to outside contractors."

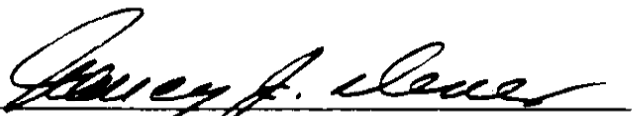
In light of the foregoing provisions and the Carrier's unrefuted submission of specific, numerous instances of past practice, we must rule to deny the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of April 1988.