

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(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 dirt moving and compacting work in the Peterson-Uintah, Utah area during March, April and May, 1984 (System File M-32/013-210-52).

(2) The Agreement was further violated when the Carrier did not give the General Chairman prior written notification of its plan to assign said work to outside forces.

(3) Because of the aforesaid violations, furloughed Group 9 Roadway Equipment Operators J. R. Gillen and R. W. Wade shall each be allowed pay at their respective rates for an equal proportionate share of the man-hours expended by outside forces retroactive sixty (60) days from May 29, 1984."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

This dispute arose after Carrier contracted out work to outside forces to perform dirt moving and compacting work in the Peterson-Uintah, Utah area during March, April and May, 1984. The Organization essentially contends that the contracted work is of the character that is contractually reserved to, and has customarily and historically been performed by, its craft. Moreover, it submits that the subcontracting occurred without the prior notification required under the Agreement.


The Carrier concedes that it did not provide notice of its intent to contract out the work. It contends that its actions were justified on the grounds that an emergency existed and that past practice supported its action. In its handling of the dispute on the property, however, it failed to offer any evidence of emergency or past practice. The Organization's Claim on the merits, accordingly, must be sustained. The remaining issue concerns the remedy for the violation. In the handling of this case on the property, Carrier took issue with the Organization's assertion of the number of hours worked by the outside contractor. Accordingly, it is the intent of this Award to make Claimants whole and they are to be compensated for the actual amount of time that the outside forces worked, such time to be determined by Carrier and the Organization who are directed to consult the work records to determine the appropriate amount of hours.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1988.