

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company
(former Missouri Pacific 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 (Osmose Construction) to pour concrete, install anchors and apply epoxy grout under the billit and rail plates in the East Scale approach beginning June 6, 1986 (Carrier's File 860133).

(2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it did not give the General Chairman advance written notice of its intention to contract said work.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, B&B Foreman L. Edgar, Assistant Foreman L. Atkinson and Carpenters R. Karr, R. Jones, C. Littleton, J. Miles, B. Miller and B. Seager shall each be allowed pay at their respective straight time and overtime rates for all hours expended by the contractor performing the work identified in Part (1) above beginning June 6, 1986 and continuing until the violation is corrected."

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.

In June 1986 the Carrier contracted with an outside firm to perform concrete work in the Kansas City Terminal. This work consisted of pouring concrete and installing anchors in the East Scale approach and applying epoxy grout. The Organization argues that the Carrier failed to give appropriate advance notice of the work and that the work was of a nature which should have been performed by maintenance of way forces.

The Carrier offers evidence of contracting out work similar to that here under review in 251 separate instances for a period of almost 20 years prior to the filing of the Claim. This appears to the Board to be a sufficient basis for a determination of acquiescence by the Organization.

With this finding, the Board does not examine other arguments raised by the Carrier as to the effect of the "general" Scope Rule and the degree to which maintenance of way forces have or have not performed such work.

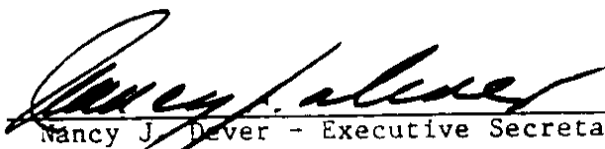
The Board is fully aware and in support of previous Awards finding the Carrier at fault in failing to provide the requisite advance notice, even where examination of the merits leads to the conclusion that maintenance of way forces were not improperly denied opportunity to perform the work. In this instance, however, there is a largely undisputed account of contracting out this particular type of construction work over many years. This is sufficient to warrant a denial of 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 3rd day of April 1992.