

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29475
Docket No. MW-29026
93-3-89-3-447

The Third Division consisted of the regular member 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 Agreement was violated when the Carrier assigned outside forces (Overcramer Contractors) to perform Maintenance of Way work (recovering track ties, rails and plates) in the vicinity of Mile Post 13 in Kirkwood, Missouri from January 25 through 29, 1988 (Carrier's File 880270 MPR).

(2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it failed to notify the General Chairman in writing of its intention to contract out said work.

(3) The Agreement was further violated and the claim* as presented by the General Chairman on March 24, 1988 to Superintendent K. C. Packard should be allowed as presented because Superintendent Packard failed to disallow the claim in accordance with Rule 12, Section 2(a).

(4) As a consequence of the violations referred to in Parts (1) and/or (2) and/or (3) above, Messrs. E. Prewitt, O. Rivers and M. Williams shall each be allowed forty (40) hours of pay at their respective straight time rates.

*The initial claim will be reproduced within our initial submission."

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.

This Claim concerns the Carrier's use of contract employees to perform backhoe and hauling work in connection with a track project undertaken by Carrier forces as well as the Carrier's failure to provide advance notice to the Organization.

Particularly as to long-established practice and the Organization's previous failure to protest, this dispute is parallel to that reviewed in Third Division Award 29474 which in turn relied on Third Division Award 28849. Those Awards directed the Carrier to provide notice to the Organization, without sustaining the monetary portion of the Claims. Since the dispute here under review was initiated in 1988, well before the issuance of Award 28849, no purpose is served in repeating the direction to the Carrier.

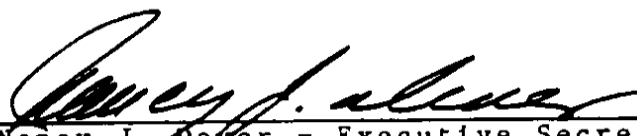
With this finding, the Board need not undertake review of the Organization's contention that the Carrier failed to make a timely response to the Claim and the Carrier's contention that the Claim was not initially filed with the proper Carrier official.

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 21st day of January 1993.