

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 to operate a backhoe to lay rail and perform ditching work at various locations along the right-of-way, within the Arkansas Division (initially between Mile Post 358 and Mile Post 374 near Norfolk, Arkansas) beginning on January 2, 1987 and continuing (Carrier's File 870512 MPR).

(2) The Agreement was further violated when (sic) did not give the General Chairman prior advance written notice of its intention to contract out the work involved here, in accordance with Article IV of the May 17, 1968 National Agreement and the December 11, 1981 Letter of Agreement.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, furloughed Arkansas Division Machine Operator J. D. Hays shall be allowed '...8 hours pay per day from date listed, until recalled or job bulletined to the MofW employees.' beginning on January 2, 1987 and continuing."

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 Claim concerns the Carrier's use of a contract employee to operate a contractor's backhoe 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 1987, well before the issuance of Award 28849, no purpose is served in repeating the direction to the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated, at Chicago, Illinois, this 21st day of January 1993.