

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 29532  
Docket No. MW-29020  
93-3-89-3-445

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 Agreement was violated when the Carrier assigned and used an outside concern to haul, unload ties and perform other track clean-up work on the right of way at Kerr McGee for the Texarkana Project on September 8 through 30, 1987 (Carrier's File 870959 MPR).

(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, Foreman A. P. Vera, Assistant Foreman R. E. Smith and Machine Operator J. D. Shelton shall each be allowed '...an equal proportionate share of the 544 hours worked by four (4) men from Larry Woods Contractors, Ada, Oklahoma, on September 8 - 30, 1987.'"

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 contract employees to remove ties and perform related clean-up 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 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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of February 1993.