

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29560  
Docket No. MW-29013  
93-3-89-3-438

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 Employes  
(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 perform grade crossing renewal work at Mile Posts 654.0, 648 and 639 in the vicinity of Radium, Seward and Hudson, Kansas on the Kansas Division on June 8 and 9, 1987 (Carrier's File 870919 MPR).

(2) The Carrier also violated Article IV of the May 17, 1968 National Agreement and the December 11, 1981 Letter of 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 W. E. Fisher and Trackmen R. D. Smith, C. D. Jones, M. B. Ahne, K. R. Fisher and D. L. Swafford shall each be allowed sixteen (16) hours of pay at their straight time rates and pay at their time and one-half rates for any overtime man-hours worked by the contractor's forces on June 8 and 9, 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 employee or employees involved in this dispute are respectively carrier and employee 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.

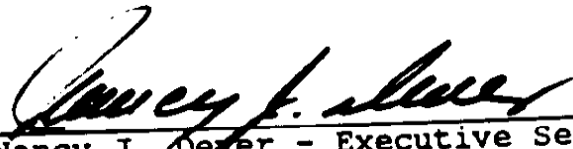
This dispute concerns the Carrier's use of contractor forces, as stated by the Organization, "to patch road crossings with blacktop material" at points in the Kansas Division on June 8 and 9, 1987. The same parties were involved in a virtually identical dispute pertaining to the St. Louis Terminal on the same commencement date. This was resolved in Third Division Award 28849, and the Board finds the reasoning therein fully appropriate here. That is to say, prior notice to the General Chairman is required, and should be adhered to in the future. In view of the Organization's failure to protest similar instances in the past, however, no further remedy is appropriate.

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 9th day of March 1993.