

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29563  
Docket No. MW-29227  
93-3-90-3-100

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 claim\* as presented by Assistant General Chairman G. L. Barker on March 3, 1988 to Manager of Program Services J. J. Stoner shall be allowed as presented because the claim was not disallowed by Mr. Stoner in accordance with Rule 12, Section 2 (Carrier's File 880399 MPR).

\*The initial letter of 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 employe or employes involved in this dispute are respectively carrier and employe 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 on behalf of two Claimants concerns the Carrier's use of outside contractors to perform certain welding work. Without regard to the merits involved,, the parties agreed in the claim handling procedure that the Carrier failed to respond to the Claim in timely fashion, bringing into play Rule 12, Section 2 (a), which states that, in such event:

"...the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the carrier as to other similar claims or grievances."

The parties disagree as to the amount of payment necessary to meet this requirement. The Organization's initial Claim refers to two contractor employees working "fifteen (15) hours a day" commencing February 1, 1988 until completion of the work. Further specific data is not included in the original Claim. During the claim handling procedure, the Organization contended that this amounted to more than \$15,000 for each Claimant. The Carrier disputed this calculation, although the Organization contends that the Carrier's precise estimates of the work performed were not provided on the property.

In this circumstance, the Board relies on the reasoning expressed in Third Division Award 28890, involving the same parties in a similar dispute. Therein the Board concluded that, absent specific data within the original Claim, the matter should be remanded to determine the factual situation.

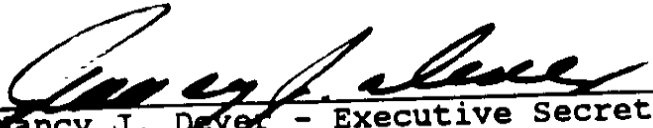
The Board concludes, therefore, that the dispute shall be remanded to the parties for a determination of the precise number of hours worked by the contractor's employees on the specified work. The Organization shall review the Carrier's records as a basis for the inquiry. The Board further determines that pay at the pro rata basis 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.