

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29577  
Docket No. MW-28812  
93-3-89-3-212

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(Brotherhood of Maintenance  
of Way Employes  
PARTIES TO DISPUTE: (  
(Union 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 to widen the grade and build a berm in preparation for constructing a new side track between M.P. 407 and M.P. 408 in the vicinity of Sidney, Nebraska beginning April 30, 1987 (System File M-656/880031).

(2) The Agreement was further violated when the Carrier assigned outside forces to construct a new side track between M.P. 407 and M.P. 408 in the vicinity of Sidney, Nebraska beginning June 8, 1987 (System File M-658/880056).

(3) The Agreement was further violated when the Carrier assigned outside forces to construct a new switch for the Co-Op Elevator Track at M.P. 407.30 in the vicinity of Sidney, Nebraska on October 1 and 2, 1987 (System File 5F-52-17/870944).

(4) The Agreement was further violated when the Carrier did not give the General Chairman prior written notification of its plans to contract out the work outlined in Parts (1), (2), and (3) above.

(5) As a consequence of the violations referred to in Parts (1) and/or (4) above, Roadway Equipment Operators L. E. Easton, I. R. Gilbert, J. F. Gerrard, C. D. Stueben, D. K. Melius, R. L. Goettsche, R. L. Wagner and J. M. Narduzzo shall each be allowed two hundred ninety (290) hours of pay at their respective straight time rates.

(6) As a consequence of the violations referred to in Parts (2) and/or (4) above, Laborers J. A. Alberts, R. L. Paul, C. J. Triplett, D. K. Snyder, R. A. Nila, L. T. James and J. J. Martinez shall each be allowed one hundred sixty (160) hours of pay at their respective straight time rates.

(7) As a consequence of the violations referred to in Parts (3) and/or (4) above, Laborers J. A. Alberts, R. L. Paul and C. J. Triplett shall each be allowed eighteen (18) hours of pay at their respective straight time rates. In addition, the Claimants shall be made whole for all fringe benefit loss suffered."

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.

The Claim at issue is a consolidation of the Organization's three separate claims alleging that the Carrier hired outside contractors to perform construction work at M.P. 407 to M.P. 408 on three different occasions and did not offer the furloughed Claimants the opportunity to perform this work.

The Carrier denied all three claims contending that the work in question was performed on property that was sold on June 1, 1987, to Farmers Co-Op. Therefore, with the sale of this property, the Carrier gave up its right of ownership and control of the trackage between Mile Posts 407 and 408. Furthermore, the Carrier contends that Farmers Co-Op contracted for the construction of 5,207 feet of new track and not the Carrier.

This Board has reviewed the extensive record in this case, and we find that the Organization has presented sufficient evidence to support its claim that the subcontracting that was done by the Carrier prior to June 1, 1987, was in violation of the Agreement. Therefore, the claims that relate to the period of time prior to June 1, 1987, must be sustained. The claims for time relating to the subcontracting that took place after June 1, 1987, shall be denied.

The record reveals that beginning on or about April 30, 1987, the Carrier contracted with an outside company to perform machine operating work for the Carrier on Carrier property. At the time, some of the Claimants were on furlough. The subcontracted work took place in April and May of 1987. The Carrier did not notify the General Chairman of its plan to contract out the above described work as required by Rule 52. Consequently, since the Carrier violated the Notice Rule and the subcontracted work took place on Carrier property, the Organization is entitled to relief.

The record also reveals that on June 1, 1987, the Carrier sold an industrial spur track near Sidney, Nebraska, to Farmers Co-Op. With the sale of that trackage, the Carrier gave up ownership and control of the trackage. Farmers Co-Op later contracted for the construction of new track on that property.


This Board has held in the past that the Carrier cannot be held responsible for subcontracting work that is performed on property that the Carrier does not own. Consequently, with respect to the work that was performed on the property after June 1, 1987, the claim is denied. With respect to any work that was subcontracted on the Carrier property prior to June 1, 1987, the claim is sustained.

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.