

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29610
Docket No. MW-29902
93-3-91-3-284

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance
(of Way Employes
(Southern Pacific Transportation
(Company (Eastern Lines)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier used an outside concern to perform concrete pad replacement work at the IMS Facility at Avondale Yard, Louisiana on March 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, April 4 and 5, 1990 (System File MW-90-71/492-60-A SPE).

(2) As a consequence of the violation referred to in Part (1) hereof, B&B Foreman G. A. LeBlanc, First Class Carpenters J. Theriot, W. Stanford, L. Huval, D. P. Barras and Machine operators H. Olivier and P. Mayeaux shall each be allowed ninety-six (96) hours' pay at their respective rates."

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 underlying facts in this case are not in dispute. Between March 19 and April 5, 1990, outside forces were used to perform concrete pad replacement work at Carrier's Intermodal Facility at Avondale Yard, Louisiana. Carrier served notice of its intent to

contract out this work by letter of February 22, 1990.

The Organization alleges that this work has customarily and traditionally been assigned to and performed by members of the Organization and that Carrier has violated the Agreement by allowing the work to be performed by outside forces. The Carrier, on the other hand, contends that this is work which has historically been performed by other than Members of the Organization, and is not work which is exclusively reserved to them under the Agreement.

The following Rules are pertinent to a resolution of this dispute:

"Article 1 Scope

These rules govern rates of pay, hours of service and working conditions of all employees in the Maintenance of Way and Structures Department (not including supervisory forces above the rank of foreman) represented by the Brotherhood of Maintenance of Way Employees...."

"Article 36 - Contracting Out

In the event this Carrier plans to contract out work within the scope of the applicable schedule agreement, the Carrier shall notify the General Chairman of the organization involved in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than 15 days prior thereto.

If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said subcontracting transaction, the designated representative of the Carrier shall promptly meet with him for that purpose. Carrier and Organization representatives shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached the Carrier may nevertheless proceed with said contracting, and the Organization may file and progress claims in connection therewith.

Nothing in this Article shall affect the existing rights of either party in connection with contracting out. Its purpose is to require the Carrier to give advance notice and, if requested, to meet with the General Chairman or his representative to discuss and possible reach an understanding in connection therewith."

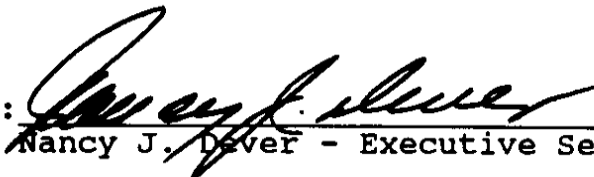
Since the Carrier has complied with the notice requirements of Article 36, the issue is whether the work can nonetheless be contracted out under the third paragraph of Article 36. It is undisputed that similar work, while also performed by the employees, has been previously contracted out by the Carrier. Following a long line of Third Division Awards, we therefore conclude that the Carrier did not violate the Agreement in this instance.

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 8th day of April 1993.