

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29791
Docket No. MW-29605
93-3-90-3-571

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen 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 Agreement was violated when the Carrier assigned outside forces (Oberkramer Contracting) to perform track work (building a crossover and handling track material) in the vicinity of Mile Post 73 on the Sedalia Subdivision on August 19 and 20, 1989 (Carrier's File 890654 MPR).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intention to contract out said work as required by Article IV of the May 17, 1968 National Agreement.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Foreman D. J. Kemper, Trackmen R. A. Bonnarens and J. B. Holtschneider shall each be allowed sixteen (16) hours of pay at their respective straight time 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 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.

Without prior notice to the Organization, the Carrier contracted with Oberkramer Contracting Co. to perform track construction work in connection with the building of a crossover between the north and south main line switches at Mile Post 73 on the Sedalia Subdivision, in the vicinity of Berger, Missouri. On August 19 and 20, 1989, employees of Oberkramer operated one dump truck and two backhoes hauling company materials such as tie plates, anchors, ties and rail, in addition to performing other basic track construction work.

The instant dispute was initiated by the Organization on September 5, 1989, on behalf of the named Claimants in conjunction with the events referred to above.

The same transaction which produced this claim resulted in a companion claim decided by the Board in Third Division Award 29792. For reasons developed fully in that decision, the present claim also is sustained in part but no monetary damages are awarded.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 29th day of September 1993.