

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 29999  
Docket No. MW-29429  
94-3-90-3-351

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier used outside forces to perform snow removal, road grading and installation of makeshift bridges between and in the area of Huron and Huntington, Oregon beginning on January 28, 1989 (System File S-165/890456).
- (2) The Agreement was further violated when the Carrier did not give the General Chairman advance written notice of its intention to contract out the work involved here in accordance with Rule 52.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Roadway Equipment Operators D. T. Green, H. K. Hawk, C. F. Barnett, H. J. Rooney, J. Z. Summerfield, C. F. Creel, J. A. Wheeler, L. I. Hendry, R. V. Robinson and R. E. Hill shall each be allowed two hundred forty (240) hours at their respective straight time rates of pay, two hundred eighty-two (282) hours at their respective time and one-half overtime rates of pay for the period from January 28 through March 10, 1989 and pay in the amount of an equal proportionate share of the total number of man-hours expended by the outside forces beyond March 10, 1989 and continuing."

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 dispute was effectively described by the Carrier as follows:

"This case is based on the use by the Company of contractors to remove snow, grade roads and install temporary bridges at various locations on the railroad's main line where emergency conditions existed. Use of the contractor was compelled by the fact that all Company forces and equipment were fully deployed. The situation driving the utilization of all available forces and equipment, including contract equipment and employees was a protracted weather emergency. In January 1989 and into March, during the time period covered by this claim, the Company was confronted by both flood and snow emergencies compounded by a sequence of weather caused derailments....

The broad extent of the problems overtaxed the Company's manpower and equipment resources and mandated extensive use of contractors...."

The Organization did not effectively dispute this summary of the situation. Rule 52, Contracting, provides for contracting of work when "the Company is not adequately equipped to handle the work, or when emergency time requirements exist." Even the need for advance notice to the General Chairman is mitigated in "emergency time requirements" cases.

Thus, no review is required here of the assignment of such work to employees represented by the Organization under other circumstances (and indeed along with contractor forces in these circumstances). The Board also need not be concerned here with other contractual aspects raised here by the Organization and the Carrier.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

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

Dated at Chicago, Illinois, this 21st day of January 1994.