

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30005  
Docket No. MW-29511  
94-3-90-3-448

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 assigned outside forces (T. C. Taylor and Company) to perform right of way cleaning work (removal of ties, tie butts and debris) between Mile Post 73.00 and Mile Post 122.00 in the vicinity of Menoken, Sullivan and Marysville, Kansas beginning April 24, 1989 and continuing (System File S-196/890447).
- (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 Rule 52.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Roadway Equipment Operators I. R. Gilbert, R. P. McNelis, J. F. Gerrard and D. J. Kobza shall each be allowed pay at their respective rates for an equal proportionate share of the total number of man-hours worked by the outside contractor performing the work in Part (1) above."

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 herein is described by the Organization as follows:

"Beginning April 24, 1989, without advance notice or conference with the General Chairman, the Carrier assigned or otherwise permitted four (4) employees of an outside concern (T. C. Taylor and Company) to perform right of way cleaning work removing ties, tie butts and debris between Mile Post 73.0 and Mile Post 122.0 in the vicinity of Menoken, Sullivan and Marysville, Kansas."

The Carrier states that it did provide notice of such contract work in a letter dated January 19, 1989, advising of the Carrier's intent "to solicit bids covering the pick up, removal, disposing and loading of crossties, switch ties and crossing timbers released from the Company's annual tie renewal programs on Service Units 6, 7, 8 and 9".

Without addressing further the question of advance notice, the Board nevertheless determines that, as described by both the Carrier and the Organization, the work is of a nature customarily performed by employees represented by the Organization. The instances of "past practice" cited by the Carrier is unconvincing as to the "pick up, removal, disposing and loading" work involved here. Simply put, the Carrier has not demonstrated any convincing basis which required or permitted the contracting of such work under Rule 52.

As to remedy, the Organization asserts that the Claimants were in furlough status. Thus, a genuine loss of work opportunity is demonstrated.

A W A R D

Claim sustained.

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.