

## NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award No. 30163

Docket No. MW-30191

94-3-91-3-639

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Union Pacific Railroad Company

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

- (1) The Carrier violated the Agreement when it assigned an outside contractor to perform right of way fence construction and repair work on the north side of the tracks between Mile Posts 825.35 and 834.80 near Stauffer, Wyoming beginning May 14 through and including June 8, 1990 (System File S-343/900564).
- (2) The Carrier further violated the Agreement when it assigned an outside contractor to perform right of way fence construction and repair work on the south side of the racks between Mile Posts 873.50 and 861.50 near Hampton, Wyoming beginning June 4, 1990 and continuing (System File S-345/900566).
- (3) The Carrier further violated the Agreement when it assigned outside forces to perform right of way fence construction and repair work between Mile Posts 902.25 and 897 and between Number 1 and Number 2 Tracks between Mile Posts 900.50 and 902.25 near Aspen, Wyoming beginning June 4, 1990 and continuing (System File S-346/900567).
- (4) As a result of the violations referred to in Part (1), (2), and/or Part (3) above, Bridge and Building Subdepartment Foreman P. C. Curby, employees R. L. Kinkade, J. E. Medina, I. Caro, and furloughed Maintenance of Way employees A. Guardiola, D. D. Fernandez, and B. H. Bogart shall each be allowed pay for an equal proportionate share of the total number of straight time and overtime man-hours consumed by the employees of the outside contractor at their respective straight and over time rates of pay."

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.

The dispute arises out of the Carrier's assignment of outside forces on the claimed dates and locations to perform the work of right of way fence construction and/or repairs.

The ability of this Carrier to contract out fence construction work has been upheld in Third Division Awards 29393, 28789, 28558, 30004, 30007, and 30008. Given the practice established on the property for this kind of contracting out, we cannot say that those Awards are palpably erroneous. In the interests of stability, those Awards shall therefore be followed. Third Division Award 29916 does not change the result. That Award is non-precedential by its terms ("Finally, in view of the peculiarly convoluted fact pattern and unique evidentiary problems present in this case, the Board's Findings and Award are restricted to the instant case.").

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: \_\_\_\_\_

*Linda Woods*  
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 26th day of April 1994.