

## NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award No. 30167

Docket No. MW-30199

94-3-91-3-647

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 Agreement was violated when the Carrier assigned or otherwise permitted outside forces (Harney Sand and Gravel of Burns, Oregon) to construct right of way fence at the new North Powder Ballast Pit near North Powder, Oregon, from April 23 through and including April 27, 1990, (System File S-357/900611).

(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.

(3)As a consequence of the violations referred to in Parts (1) and/or (2) above, furloughed Oregon Division Bridge and Building Subdepartment Carpenters D. C. Barnhouse, J. L. Kuhn, and D. L. Francois shall each be allowed an equal porportionate share of the one hundred twenty (120) man-hours expended, i.e., forty (40) hours pay each at their B&B carpenter's 1st class 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.

This dispute arises out of the Carrier's assignment of outside forces on the claimed dates to perform the work of digging fence post holes, setting fence posts, stringing wire, building wire gates, and removing old fence.

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. With respect to the allegation of the Organization that no notice was given (which the Carrier disputes), see Third Division Award 30004, ("In view of the more fundamental consideration of prior practice, the Board here, as in Award 28789, does not find this of determinative significance."). 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 presented 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.