

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30182
Docket No. MW-29552
94-3-90-3-494

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 Employees
(
(Southern Pacific Transportation Company
((Eastern Lines)

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

1. The Agreement was violated when the Carrier assigned outside forces (Boh Brothers Construction Company) to construct a waste water treatment facility at Mile Post 147 in the West Yard at Lafayette, Louisiana beginning on or about August 31, 1989 and continuing (System File MW-89-110/485-89-A SPE).
2. As a consequence of the aforesaid violation, B&B Foreman R.C. Lormand, Assistant Foreman G.W. Viator, B&B Carpenters W. Stanford, L. Huval, D.P. Barras, R.W. Sonnier, C.J. Arceneaux, Machine Operators C.L. Fontenot, M.D. Rideau, N.W. Sinegal, H. Olivier and W. Williams shall each be allowed pay at their respective rates for an equal proportionate share of the total number of man-hours expended by the outside forces 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.

By letter dated July 6, 1989, the Carrier notified the Organization as follows:

"Please accept this as Carrier's notice pursuant to Article 36 of the BMW Agreement of our intent to contract out the following work:

- Construction of new wastewater treatment facility at Lafayette, Louisiana.

It is necessary to contract out this work as the Carrier does not have the personnel, equipment or expertise to construct this facility to meet EPA specifications.

The work will begin on or after August 1, 1989".

The Organization requested a conference on the matter. Following such conference, the Organization advised the Carrier by letter dated July 19, 1989, in pertinent part as follows:

"During the conference you were advised that we are now in a large force reduction on the Lafayette Division, you were also advised that the Carrier owned or had under lease all necessary equipment to perform this work and if any other equipment was needed it could be rented without operators in the Lafayette, Louisiana area.

During the conference you were advised that it was our position that the Maintenance of Way forces did have the expertise to perform all work involved in your notice. You were advised that Maintenance of Way employees have built or installed this type facility or similar facilities at a number of locations on the Southern Pacific and St. Louis Southwestern properties (Dallas, Ennis, Fort Worth, Hearn, Houston, Pine Bluff and Dalhart)".

The work in question was performed by an outside contractor commencing August 31, 1989, and a timely Claim was initiated by the Organization.

A full review of the record convinces the Board that Carrier arguments as to justification of the necessity of using outside forces are not persuasive under the applicable Rules. Previous performance of such work by Carrier forces was not denied. Indeed, other than argument, the Carrier offered no evidence of justification at all in the on-property handling of the dispute.

The particular circumstances here demonstrate a lack of the required "good faith" efforts to assign such work to Carrier forces.

The question remains as to the remedy, with the Carrier contending that no monetary penalty is appropriate because the Claimants were under pay during the claimed period. The Board is fully aware that previous Awards have examined the propriety of pay depending on individual factual circumstances. Here, the Board finds it would be an inadequate resolution simply to state that the Carrier acted in violation of applicable Rules and will sustain the Claim as presented.

A W A R D

Claim sustained.

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.