

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30186
Docket No. MW-28920
94-3-89-3-325

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

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

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

1. The Carrier violated the Agreement when it assigned outside forces to build partitions and rooms in the depot at Coffeyville, Kansas on August 17 through 21, 1987 (Carrier's File 870840 MPR).
2. The Carrier also violated the Agreement when it failed to give the General Chairman at least fifteen (15) days' advance notice of its plan to contract out the work described in Part (1) hereof.
3. As a consequence of the violations referred to in either Part (1) and/or Part (2) hereof, B&B Foreman J.A. Henderson, Assistant Foreman M.R. Cordray, Mechanic G. Fisher, Helper J.A. LaFon and Motor Car Operator G.J. Durst shall each be paid "... for an equal proportionate amount each Claimant for eight (8) hours each day plus overtime for August 17 - 21, 1987 account contractor worked (2) men."

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 parties to this dispute are subject to Article IV of the May 17, 1968, Agreement which applies to contracting out. In the case before the Board, the Organization protests the use of a contractor to, essentially, remodel the depot at Coffeyville, Kansas. In its initial claim, the Organization asserted this work was Scope Rule covered and argued that advance notice was required. The Carrier responded by providing a long list of projects in the past where contractors were used without protest by the Organization. Eventually the Organization provided a number of statements from employees and former employees attesting to the fact in the past they did a number of building projects.

The Board, after reviewing the record, is convinced of several things. First, the Organization has demonstrated enough history of performing this particular type of work to convince us that, as a general matter, it is entitled to advance notice for these kinds of projects. However, we are also convinced that the Organization has slept on the right to notice for many years. Thus, given this acquiescence, no remedy is appropriate for the lack of notice in this case except to direct the Carrier to comply with the notice requirements in the future for projects of this nature. Where there is a history and custom, not necessarily exclusively, however, of employees performing certain work, notice is required. Of course, the fact notice is required does not mean contracting out cannot take place. The ultimate propriety of the Carrier's actions must be judged on the traditional criteria.

A W A R D

Claim sustained in accordance with the Findings.

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.