

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30199
Docket No. MW-29818
94-3-91-3-175

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

PARTIES TO THE 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 outside forces (C. M. Construction) to construct the Carmen Locker and Lunchroom Building at the Shop Facility at Pocatello, Idaho beginning October 12, 1989 and continuing (System File S-242/900179).
- (2) As a consequence of the aforesaid violation, Bridge and Building Foreman A. S. Kunz, Carpenters M. S. Tilley, R. W. Tilley, T. D. Stalder, R. E. Baker and C. L. Harris shall be allowed compensation as follows:

'*** Claimant Kunz should be paid one hundred (100) hours of straight time pay and eight (8) hours of time and one-half (1 1/2) at the B&B foremans rate of pay, Claimants Harris and Baker should each be paid one hundred (100) hours of straight time pay and eight (8) hours of time and one-half (1 1/2) at the B&B first class carpenters rate of pay, and Claimants Stalder, "Tilley and Tilley should each be paid one hundred (100) hours of straight time pay and eight (8) hours of time and one-half (1 1/2) at the B&B second class carpenters rate of pay, for building work accomplished as of November 21, 1989. This claim is considered continuous as the entire construction of the building is work belonging Claimants because they are Union Pacific Railroad Maintenance of Way Bridge and Building Subdepartment Employees.'"

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.

This claim contests the work performed by an outside contractor, C. M. Construction, on a new Carmen Locker and Lunchroom in the Pocatello, Idaho, Shops area, commencing on October 12, 1989. The Organization alleges that this was typical B&B construction work contractually reserved to its forces under Rules 1, 2, 3, 4, 6, and 8 of the parties' Agreement, which it had performed customarily.

On August 8, 1989, Carrier notified the General Chairman of its intent to solicit outside bids. The Organization maintains that solicitations for bids were sent prior to this Notice. Regardless of whether Carrier had done so, it is only required to give the Organization notice of its intent to subcontract. We view this letter as constituting proper notice to the Organization. A conference was held thereafter. When the matter was not resolved, Carrier proceeded with the subcontracting. There is no dispute that all of the Claimants were fully employed during the time in question.

Carrier argued in this instance, among other things, that it did not have forces available at the time to do the work. This Board is persuaded that that was in fact the case. Under the provisions of Rule 52, this constituted a valid reason for proceeding with the subcontract, notwithstanding the parties, other arguments concerning whether the work was covered by the Scope Rule, the weight of past practice by subcontracting, the applicability of the exclusivity doctrine, and the like.

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 8th day of June 1994.