

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30219
Docket No. MW-29622
94-3-90-3-610

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
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(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 (Haddon's Chain Link Fence) to install a chain link security fence on the south end of the Maintenance of Way System Repair Shop at Pocatello, Idaho on May 30, 1989 (System File S-207/890738).
- (2) The Agreement was further violated when the Carrier failed and refused to furnish the General Chairman with an advance written notice of its intention to contract out said work as required by Rule 52(a).
- (3) As a consequence of the violations referred to in Part (1) and/or (2) above, Carpenters R. R. Olsen, and W. S. Wallace shall each be allowed eight (8) hours of pay at the first class carpenter's straight time rate."

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.

On May 30, 1989, the Carrier contracted with an outside concern to construct a chain link fence at the south end of the Maintenance of Way System Repair Shop at Pocatello, Idaho. The contractor utilized three of its own employees to perform the work. No advance written notice of the proposed work was provided to the General Chairman.

Instances closely similar to this have been reviewed in numerous previous Awards, including Third Division Award 28558, where prior notice was given, and Third Division Award 28789, where no notice was provided. After citing other Third Division Awards, Award 28558 concluded as follows:

"We find these Awards directly on point. In this case, Carrier has also established a long history of contracting out the construction of right-of-way fences. This work, therefore, is subject to the exception provided in Rule 52(b) without regard to whether or not it is reserved exclusively to covered employees. The Agreement was not violated."

In this instance, the fence was not on a right-of-way, but the Board does not find this sufficiently distinguishable to arrive at a different conclusion.

AWARD

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.