

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30221
Docket No. MW-29629
94-3-90-3-615

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 Employes
(
(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 (American Fence Company) to install a chain link fence between Mile Post 217.5 and Mile Post 217.7 at Pocatello, Idaho, on July 24, 25, 31, August 1, 2 and 3, 1989 (System File S-208/890742).
- (2) As a consequence of the aforesaid violation, Bridge and Building Subdepartment Foreman A. S. Kunz and Carpenters C. J. Wisler and G. O. Harmon shall each be allowed ninety-six (96) hours of pay at their respective 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 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.

On the dates specified in the Claim, the Carrier contracted with an outside concern to construct a chain link fence between Mile Posts 217.5 and 217.7 at Pocatello, Idaho. Advance notice of the proposed work was provided to the General Chairman.

Instances closely similar to this have been reviewed in numerous previous Third Division Awards, including Award 28558, where prior notice was given, and 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."

The Board finds no basis to reach a different conclusion here.

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.