

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30269  
Docket No. MW-30050  
94-3-91-3-461

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen 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 Agreement was violated when the Carrier assigned outside forces (Determan and Merrill Contracting) with a tractor, a forklift, three (3) trackhoes, three (3) trucks and twenty (20) employees to pick up, load and haul rail starting at Mile Post 195 beginning April 17, 1990, and continuing (Carrier's File 900541 MPR).
- (2) The Agreement was further violated when the Carrier failed and refused to furnish the General Chairman with advance written notice of its intention to contract out said work as required by Article IV and the December 11, 1981 Letter of Agreement.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, KO&G Division Track Foreman K. W. Lynch, Assistant Foreman C. K. Loch, Machine Operators N. L. Harjo, J. J. Boyd, B. W. Griffin, B. T. Brown, R. D. McDonald, Trackmen J. C. Lee, J. P. Mericle, F. Jacobs, W. L. King, D. W. Tarpalachee, and D. Johnson shall be allowed an equal proportionate share of all time worked by contractors on the KO&G Division beginning April 17, 1990."

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.

The Organization alleges that Carrier violated the Scope Rule, Rules 1 and 2 of the Agreement, the National Agreement of May 1968 and the "Letter of Good Faith" of December 11, 1981, when it "assigned outside forces to pick up, load and haul rail and failed to furnish the General Chairman with advance written notice." The work in dispute involved removal of approximately 166.5 miles of abandoned track on the Oklahoma Subdivision between Muskogee, Oklahoma (MP 130.00) and KOG Junction, Oklahoma (MP 297.6). It should be noted that the facts set forth in this dispute are indistinguishable from those issues in companion Third Division Award 30268.

In a letter dated December 28, 1989, Carrier advised the Organization as follows:

"This is to advise of the Carrier's intent to solicit bids to cover the removal of trackage appurtenances on the Oklahoma Subdivision between Muskogee, Oklahoma (MP 130.00) and KOG Junction, Oklahoma (MP 297.6) in conjunction with Company forces. Estimated duration of project will be between six to twelve months.

This is the type of work that has customarily and traditionally been performed by outside contractor's forces. The Carrier has neither the skilled manpower nor the proper equipment to safely and competently undertake and complete this project in a timely manner.

Serving of this 'Notice' is not to be construed as an indication that the work described above necessarily falls within the 'scope' of your Agreement, nor as an indication that such work is necessarily reserved as a matter of practice, to those employees represented by the Brotherhood of Maintenance of Way Employees."

Therefore, the Organization's claim that Carrier "failed to furnish the General Chairman with advance written notice" is dismissed without further discussion.

There is no dispute that Determan and Merrill's bid for the purchase and removal of a portion of the abandoned line, "as is where is", was accepted.

On June 15, 1990, the Organization filed a claim for "an equal proportionate share of all time worked by contractors on Claimants' territory beginning April 17, 1990, and continuing."

As stated previously, the facts presented in this dispute are not distinguishable from those presented in companion Third Division Award 30268. For reasons set forth in that Award, this claim must also be denied. See also: Third Division Awards 29873, 29394, 29559, 29016, 28615, 28489, 28488, 20851, 12918, and 10826.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois this 19th day of July 1994.