

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30282
Docket No. MW-28948
94-3-89-3-375

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 Agreement was violated when the Carrier assigned outside forces (Neosho Construction Company) to perform bridge repair work on Bridge 346.8 at Calico Rock, Arkansas, beginning December 21, 1987 (Carrier's File 880173 MPR).
- (2) The Agreement was further violated when the Carrier failed to timely and properly notify and confer with the General Chairman concerning its intention to contract said work as required by Article IV of the May 17, 1968, National Agreement.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the Claimants listed below* shall each be allowed pay at their respective rates for an equal proportionate share of the total man-hours consumed by the contractor's employees performing the work identified in Part (1) above, beginning December 21, 1987, and continuing until the violation is corrected.

* CLAIMANTS

FOREMAN

G. F. Ribbing

ASSISTANT FOREMAN

R. M. Threlkeld

IRONWORKERS

W. K. Foster

J. S. Eaton

R. L. Ellison

H. C. Crawley

R. R. Paul

W. D. Foster

CARPENTERS

C. R. Brown

K. D. Lack

N. J. Bader

G. E. Ribbing

T. R. Edwards

T. Wilkerson

R. R. Hatley

HOISTING ENGINEERS

G. J. Bader

R. L. Hoots

V. L. Kerperien "

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.

There are two threshold issues. They are whether advance notice of contracting out was necessary and, if so, whether as a matter of fact it was given. First, it is the conclusion of the Board that notice was necessary as the work in question was arguably scope-covered. Second, the Board concludes advance notice was given at least 15 days in advance of "the contracting transaction." The Organization argues that proper notice was not given since the notice came after the Carrier solicited bids. The Board disagrees. The act of advertising for bids does not constitute, in the words of Article IV, "the contracting transaction." Giving notice at approximately the same time bids are solicited complies with the Agreement not only because it is 15 days prior to the actual contract being executed, but because it still gives the Organization the opportunity to make its case for using Carrier forces. This is the general intent of Article IV.

Regarding the substance of the contracting out, it is our conclusion that neither Article IV nor the scope rule prohibit the contracting out of the particular work involved in this case. First, the scope rule does not specifically, clearly, or unambiguously reserve the work to B&B forces. Second, the purpose of Article IV was not to prohibit contracting out, but to require notice and to require good-faith efforts toward using Carrier forces. Article IV specifically stated it was not intended to affect the existing rights of either party. In this regard we note a history of using outside contractors for major bridge work which predated Article IV. Article IV preserved this right when exercised in a reasonable manner. There is nothing in the record which convinced us that this right under these circumstances was improperly exercised. We note in this regard the scope of the project and the full employment of the Claimants. Accordingly, the Claim is denied.

AWARD

Claim denied.

ORDER

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.