

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30286
Docket No. MW-28973
94-3-89-3-390

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces to paint stripes on the asphalt and concrete at the TOFC facility in East Los Angeles, California, on May 5, 23, and 25, 1988. (System File S-42/880579)
- (2) The Agreement was further violated when the Carrier did not give the General Chairman prior written notification of its plan to assign said work to outside forces.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Bridge and Building Subdepartment Painter M. Maximillian and R. D. Regennitter shall each be allowed forty-eight (48) hours of pay at their respective straight time rates."

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 has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The issue of whether advance notice of the contracting out was given must be dealt with at the outset. The Organization has consistently maintained throughout the handling of this claim that advance notice was not given. The Carrier in its Submission asserted that notice was given. The components of the Carrier's argument are the contentions that (1) the painting was part and parcel of a larger asphalt paving job, (2) that notice was given for the overall paving project, (3) that they are not required to piece-meal projects, and (4) as a result, separate notice was not required. The Organization filed an objection with the Board subsequent to the filing of Ex Parte Submissions objecting to the Carrier's assertion that advance notice was given. The Organization maintained such an assertion was not properly before the Board since it had not been maintained on the property.

The Board agrees with the Organization that the Carrier never explicitly asserted on the property that notice was given for the painting project by virtue of a notice on the paving project. Not only was the assertion not made, but the Carrier never produced a copy of the notice of the paving project. The Carrier did argue on the property that it was not required to piece-meal the project. This may very well be true. It may be true that notice on the overall project was sufficient. However, this begs the question. Asserting that the Carrier was not required to piece-meal the work does not by implication suggest that notice was given. Nor is there any other evidence in the record which directly or indirectly establishes either an assertion was made on the property that notice was given on the paving job or that notice was indeed given.

Given the state of the record on the property, the Board concludes that notice was not given. Thus, the finding that Rule 52 was violated is inescapable. The remaining question is one of remedy. It is noted that, according to the Carrier, one of the Claimants was employed at the time of the violation. If this is true, we are not convinced on the basis of this record that there was a lost work opportunity for that Claimant. As for the furloughed Claimant, he is entitled to damages as claimed. The Parties are directed to make a joint check of the records to verify the status of the Claimants at the time of the violation.

AWARD

Claim sustained in accordance with the Findings.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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