

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30528
Docket No. MW-30101
94-3-91-3-531

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 (Z and S Construction Company of Kimball, Nebraska) to perform right of way cleaning work from Mile Post 449 near Bushnell, Nebraska to Mile Post 315 near Paxton, Nebraska beginning February 20, 1989 through June 23, 1989 (System File S-173/890504).
- (2) As a consequence of the violation referred to in Part (1) above, Roadway Equipment Operator I. R. Gilbert and Nebraska Division Sectionmen E. L. Navarette, N. D. Hackbart, J. Garcia and P. P. Herrera shall each be allowed an equal proportionate share of the total number of man-hours expended by the outside forces."

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.

This dispute concerns, according to the Organization's description, the Carrier's action in "contracting out of the removal of old track ties, tie butts, and other debris from the right of way." The Carrier, in its prior notice to the Organization, describes the work as "the picking up and disposing of scrap railroad ties from the Company's right-of-way at various locations between approximately Paxton, Nebraska, and Bushnell, Nebraska."

The Board's attention has been directed to Third Division Award 28817, involving the same parties. Although the Carrier argues otherwise, the Board finds that Award 28817 is closely similar to the matter here under review. After reviewing the reasoning in Award 28817, the Board determines that such is applicable to the Claim herein.

The Board, on frequent occasions, does not require pay to be provided to Claimants otherwise assigned during the period in question. In this case, however, the Board follows the reasoning of Award 28817, in granting pay at appropriate rates equivalent to the hours worked by the contractor's employees. The parties are directed to meet and review the Carrier's records so as to determine the appropriate number of hours.

AWARD

Claim sustained.

ORDER

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 9th day of November 1994.