

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30827
Docket No. MW-30224
95-3-91-3-681

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 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 (Asplundh) to cut brush and weeds with hand weed cutters and weed eaters between Mile Posts 339.14 and 317.73 (Chester Subdivision), Mile Posts 74.3 and 118.2 (Pinkneyville Subdivision) and Mile Posts 310.7 and 312.1 (Chicago Subdivision) on September 24, 25 and 26, 1990 (Carrier's File 910083 MPR).

(2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it failed to furnish the General Chairman with advance written notice of its intention to contract out said work.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Foreman R. Bowie, Motor Car Operator C. Briley, Jr. and Mechanics P. Hirtz and C. Weidenbenner shall each be allowed sixty-eight (68) hours' pay at their respective time and one-half 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 Board has jurisdiction over the dispute involved herein.

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

This Claim concerns the contracting of work on three dates, described by the Organization as follows:

"The carrier had on the property a private contractor, who was engaged in cutting brush, and weeds, around and under bridges between [various] locations . . . Said work was performed with the use of hand weed cutters, and weed eaters. The contractor performed said work for a total of 68 hours on dates listed above."

This Claim closely parallels that reviewed in Third Division Award 29033 which, among other conclusions, found the Organization had provided evidence of past practice of employee performance of such work to a degree sufficient to place the work within the scope of the Agreement. Award 29033 also found inadequate the Carrier's contention as to the extent of its contracting such work.

The Board finds the conclusions in Award 29033 fully appropriate as to the merits issue involved. As to remedy, the Board finds the circumstances here warrant payment to the Claimants for the specific dates indicated. Although the Claimants were fully employed on the dates in question, the fact is that the Carrier's action resulted in lost work opportunity for its maintenance of way forces. The Board recognizes that, in this Division, pay for lost overtime work is regularly compensated at the penalty rate. Here, however, there is no basis to determine that the work would have been performed outside of regularly scheduled hours if it had been properly assigned to Carrier forces. Pay should therefore be made at the straight time rate.

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 27th day of April 1995.