

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30842  
Docket No. MW-29320  
95-3-90-3-227

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 (Tweedy Brothers Construction) to perform track work (crossing renewal, tie replacement and related hauling) on the Chester Subdivision between Prairie du Rocher and Valmeyer, Illinois and on the Sparta Subdivision at Coulterville, Illinois beginning January 9, 1989 (Carrier's File 890288 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, Trackman Driver D. R. Hoskin and Trackman W. J. Bathon shall each be allowed forty (40) hours of pay at their respective straight time rates and thirty (30) hours of pay at their respective overtime rates for each week the contractor's forces performed the work outlined in part (1) above beginning January 9, 1989 and continuing."

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 claim before the Board involves the contracting out of crossing renewal work. The status of such work as it relates to the Scope Rule was subject to review by this Board in Third Division Award 28849. The Board, in spite of evidence of past subcontracting, concluded:

"Whether the work performed was within the Scope of the Agreement is a central focus of this instant case. The Carrier has argued that the work was not exclusively that of the employees. The Organization argues that the work was Agreement protected work. The Carrier did not deny that the 'majority of the Track Department employees still perform the above disputed work from day to day.' We find that this disputed work belongs to the employees. Our full review of all issues relevant to this instant case and facts finds that the work is within the Scope of the Agreement."

While the Board, in Award 28849, found that the fact of past subcontracting did not preclude a finding that employees customarily performed the work in question, it was relevant for purposes of remedy. It was deemed significant that this past subcontracting and the failure of notice had never been protested. Given this fact, a violation of the Agreement was found, but no monetary remedy was ordered.

A review of this record suggests a similar result is appropriate here. Accordingly, Paragraphs 1 and 2 of the claim are sustained. Paragraph 3 is denied.

#### AWARD

Claim sustained in accordance with the Findings.

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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.