

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31025
Docket No. MW-28379
95-3-88-3-151

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn 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 used an outside concern to unload crossties on the right-of-way between Mile Posts 29 and 38, Mile Posts 67 and 86.50, Mile Posts 86.75 and 106.50 and between Mile Posts 145 and 160 on the Nebraska Division on March 4, 5, 6, 16, 17, 18, 19 and 20, 1987 (System File M-579/870567G).
- (2) The Agreement was further violated when the Carrier failed to schedule and hold a meeting to discuss its plans to assign said work to outside forces as requested by the General Chairman in his letter dated January 26, 1987.
- (3) Because of the aforesaid violations, Group 19 Roadway Equipment Subdepartment Operator D. Morgan shall be allowed sixty-four (64) hours of pay at the Class A Roadway Equipment Operator's rate of pay."

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.

By letter dated January 14, 1987, the Carrier advised the Organization of its intent to solicit bids to cover tie unloading operations in 1987 for system tie gang programs. By letter dated January 26, 1987, the Organization objected to the Carrier's contracting out the work and requested a conference be held prior to the work being assigned to and performed by a contractor. Conference was held on May 6, 1987 without resolution.

The contractor's forces began the work on March 4, 1987.

With respect to the merits, this matter has been addressed before on the property and has been resolved in the Organization's favor. Third Division Award 28590. That award is not palpably in error and shall be followed.

With respect to the remedy, in Award 28590, the remedy was limited to compensation for times the affected employee was in furloughed status. But we are cognizant of the Organization's argument in this matter that aside from the merits, the Carrier did not comply with its notice obligations in that the work was contracted out notwithstanding the Organization's request for a conference before the work began. However, given the status of remedies for notice violations on the property at the time of the incidents in this case, the Organization's argument does not change a conclusion in this matter that relief should be limited to times, if any, when Claimant was in a furloughed status when the contractor performed the work. See Third Division Awards 23578, 26174. Compare Third Division Awards 30286, 30066, 29310 and our discussion in Third Division Award 31030.

For reasons of stability, we are obligated to follow those Awards which addressed the status of remedial relief on the property as of the time of the events in this case. Therefore, in this case, compensation for Claimant, if any, shall be limited to times Claimant was in a furloughed status when the work was performed by the contractor.

AWARD

Claim sustained in accordance with the Findings.

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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 1st day of September 1995.