

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31026
Docket No. MW-28454
95-3-88-3-259

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 Carrier violated the Agreement when it assigned outside forces to perform the work of removing and replacing structural beams and building and rebuilding foot walks on the steel drawbridge between East Portland and Union station in Portland, Oregon, beginning January 5, 1987 (System File M-576/870569).
- (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, Steel Erection employees J. D. Bowen, S. E. Burgus, B. L. Flannery, L. H. Kelly, K. E. Murphy, R. R. McDonald and H. S. Role shall each be allowed pay at their respective rates for an equal proportionate share of the six thousand seven hundred twenty (6,720) man-hours expended by the outside forces during the claim period."

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 August 13, 1986, the Carrier informed the Organization as follows:

"Simply as information, a contractor will be utilized to replace and lubricate the 64 upper deck counter weight ropes on the double deck lift span of Bridge 0.43 across the Willamette River at Portland, Oregon.

A firm specializing in this work has always performed this service."

The Carrier asserts that it met its notice obligations. With respect to this notice, the Carrier's records show that conference was held on December 11, 1986 and that the project was "done".

However, while the Carrier's records show that as of the December 11, 1986 conference the project covered by the August 13, 1986 notice was "done", the contractor did not commence the work involved in this dispute until January 5, 1987. Moreover, the work involved in this dispute was not the replacement and lubrication of the 64 upper deck counter weight ropes as specified in the notice relied upon by the Carrier. Rather, the work involved in this dispute was the removing and replacing structural beams and building and rebuilding foot walks on the steel drawbridge.

Based on the above, we are satisfied that the work specified in the August 13, 1986 notice relied upon by the Carrier was not the work involved in this dispute. We therefore find that the Carrier contracted out the work involved in this dispute without notice to the Organization as required by Rule 52.

As a remedy, the matter is remanded to the parties to determine the number of hours expended by the contractor on this project. Claimants shall be made whole for the proportionate amount of that time to cover periods, if any, that they were in furlough status during the time the contractor performed the work in question.

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.