

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31028
Docket No. MW-29099
95-3-89-3-530

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 concrete work at the west end of the Diesel Shop in North Platte Nebraska on August 29, 30, 31 and September 1, 2, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17 and 19, 1988 (System File S-73/890031).
- (2) The Carrier violated the Agreement when it assigned outside forces to construct a material handling facility on the west end of the Diesel Shop in North Platte Nebraska on September 23, 24, 26, 27, 28, 29, 30, and October 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22 and 24, 1988 (System File S-90/890112)
- (3) As a consequence of the violation referred to in Part (1) above, First Class B&B Carpenters W. J. Harris, R. L. Sparks, D. M. Eckert, D. T. McIntosh, A. R. Kieckhafer and R. K. Hughes shall each be allowed one-hundred eighty-two (182) hours of pay at their respective straight time rates.
- (4) As a consequence of the violation referred to in Part (2) above, Group 1 Steel Erection Welders M. J. Kasper, D. E. Kinkade, J. D. Bagley, J. E. Zamora, Bridgemen J. Lopez Sr., and R. L. Bingham and B&B Carpenters W. J. Harris, R. L. Sparks, D. M. Eckert, D. T. McIntosh, A. E. Kieckhafer and R. K. Hughes shall each be allowed pay at their respective rates for an equal proportionate share of the number of man-hours expended by the outside forces performing the afore-described work."

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 2, 1988, the Carrier notified the Organization of its "intent to contract the architectural services, mechanical, electrical work and construction work in connection with the erection of a temporary material handling facility located at North Platte, Nebraska." By letter dated August 15, 1988, the Organization objected to the contracting out of that work and requested that a conference be held prior to the work being assigned to and performed by a contractor. By letter dated August 26, 1988, the Carrier offered to hold a conference on September 2, 1988. By letter dated August 30, 1988, and because of "such short notice", the Organization declined to meet on September 2, 1988 as proposed by the Carrier and requested a different date for a conference. Conference was eventually held on October 3, 1988, without resolution. The work of the contractor commenced on August 29, 1988.

The claim will be denied. First, we are satisfied that the notice covered the work involved.

Second, notwithstanding that in the claim the Organization does not allege notice issues, we find the manner in which the conference was held did not violate Rule 52 which permits the Carrier to commence the work after giving not less than 15 days' advance notice of its intent to contract out the work. The record shows that the Organization did not request a conference until almost two weeks after the issuance of the notice; notwithstanding that delay, the Carrier then offered to meet on September 2, 1988 which offer was declined by the Organization because of "short notice" and conference was mutually agreed to be held on October 3, 1988. The Organization cannot now fairly attack the scheduling of the conference arguing that the conference was improperly held after the work began. Given the Organization's delay in requesting a conference and then its rejection of the Carrier's proposal for an earlier conference date, the Organization is estopped from arguing that the Carrier did not meet its obligations under Rule 52 concerning a conference.

Third, with respect to the kind of work involved in this dispute, this Board has held that the Carrier can contract out such work. See Third Division Award 31035 and Awards cited therein. Those Awards are not palpably erroneous and, in the interest of stability, they will be followed.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of September 1995.