

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31029  
Docket No. MW-30193  
95-3-91-3-640

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 Employes  
(  
(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 (Neosho Construction Company) to perform Bridge and Building Department work of installing culverts between Marysville, Kansas and Gibbon, Nebraska beginning May 2, 1990 and continuing (System File S-341/900554).
- (2) The Agreement was further violated when the Carrier did not give the General Chairman advance written notice of its intention to contract out the work involved here in accordance with Rule 52.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, furloughed B&B Carpenters R. R. Newman and S. Ricks shall each be allowed an equal proportionate share of the total number of man-hours consumed by the contractor's employees at their respective B&B Carpenter'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 March 27, 1990, the Carrier informed the Organization of its "intent to solicit bids to cover the grading work, culvert installation and other miscellaneous work in connection with the extension of the Reedy Siding and the construction of Bridge 177.77 on the Marysville Subdivision." By letter dated April 9, 1990, the Organization objected to the contracting out of the work and requested a conference to be held prior to the work being assigned and performed by a contractor. Conference was held on May 15, 1990, without resolution.

The claim alleges that the work of the contractor commenced on May 2, 1990. However, the contractor's work report submitted by the Carrier shows that work did not commence until May 17, 1990.

The claim will be denied.

First, with respect to the notice, we are not satisfied that the Organization has demonstrated that the Carrier failed to comply with the notice and conference requirements of Rule 52. Notice was given by the Carrier on March 27, 1990 prior to the commencement of the work. While the Organization contends the work commenced on May 2, 1990 (i.e., before the May 15, 1990 conference), the Carrier's evidence shows that the work did not commence until May 17, 1990 (i.e., after the May 15, 1990 conference). Due to that conflict in evidence and because the burden rests with the Organization, we find that the Organization has not met its burden to demonstrate that the work commenced prior to the conference as it contends.

Second, 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.

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**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.