

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31170
Docket No. MW-30758
95-3-92-3-560

The Third Division consisted of the regular members and in addition Referee Margo R. Newman 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 assigned outside forces (Weidner Williams) to shovel back wall, clean and patch joints, chip old deteriorating concrete and patch same, touch up and patch with epoxy, sandblasting, driving sheet piling, set forms and overcoating with cement and work in conjunction therewith in connection with the rehabilitation on the bridge at approximately Mile Post 97.17 on the Nebraska Division commencing March 27, 1991 and continuing (System File S-508/910519).
- (2) The Agreement was further violated when the Carrier failed to provide a proper advance notice and make a good-faith attempt to reach an understanding concerning said contracting as required by Rule 52(a).
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, B&B Foreman R.E. Portis and Carpenters D.D. Carruthers, R.D. Cutsor and J.R. Ryan shall each be allowed pay, at their respective rates of pay, for an equal proportionate share of the total number of man-hours expended by the contractor's forces commencing March 27, 1991 and continuing until the project was completed."

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.

This dispute involves concrete repair and epoxy injection work necessary for the rehabilitation of the bridge at M.P. 97.17 on the Nebraska Subdivision. The Carrier served notice of its intention to contract this work on October 9, 1990, and pursuant to the Organization's October 15, 1990 request, a conference was held on November 8, 1990, wherein the parties fully discussed their respective positions. Having been unable to resolve this matter, Carrier subcontracted the work in March, 1991.

The Organization argues that the Carrier's failure to specify its reasons for contracting in its October 9, 1990 notice negates the validity of the notice. It also contends that the work involved is reserved to the Claimants by clear, unambiguous and specific Agreement rules, and that the record contains evidence of numerous employee statements supporting the conclusion that they have traditionally performed this work. The Organization takes issue with the reliability of the evidence of past practice presented by the Carrier, and asserts that monetary relief is appropriate despite full employment.

The Carrier asserts that the Scope Rule is general in nature, and that it has established a past practice of contracting similar work, permitting it to do so here under the "prior existing rights" language of Rule 52. Carrier also argues that Third Division Award 29782 issued on this property is dispositive of the issue of its right to subcontract this work, and should be given res judicata effect. It contends that notice is not an issue, and that no monetary remedy should issue since claimants were shown to be fully employed during the relevant time period.

The Board has reviewed the extensive record in this case, and initially finds that the notice given was sufficient to inform the Organization of what work was being contemplated for contracting. The fact that a full discussion of all issues the parties wished to bring forward was held during the conference, which occurred over 4 months prior to the contracting, negates any deficiency in the specificity of the notice.

It has previously been held that scope rules of this type are general in nature and do not specifically reserve work to employees. Third Division Awards 18243, 17703. We agree that the following rationale and conclusion reached by the Board in Third Division Award 30262 is equally applicable in this case.

"Numerous decisions of the Board have held that the Carrier has the right under Sections (b) and (d) of Rule 52 to contract out work where advance notice is given and the Carrier has established a mixed practice of contracting out work similar to that involved in the dispute. The record in this case demonstrates a mixed practice on this property with respect to the work in question. It has been performed by members subject to the Agreement in the past but has also been contracted out by the Carrier in the past. We thus conclude that the Carrier did not violate the Agreement when it contracted out the work."

Our determination that the Carrier's evidence is sufficient to establish a past practice of contracting out concrete bridge repair work including the application of epoxy grout, despite the Organization's challenge to the validity of much of the documentation, is buttressed by a similar finding concerning the same work in Third Division Award 29782.

AWARD

Claim denied.

ORDER

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

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of September 1995.