

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31281
Docket No. MW-30348
95-3-92-3-72

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 outside forces to perform roadway machine operator's work (dirt work and drive piling) in connection with the improvements to the eastbound locomotive servicing facility at North Platte, Nebraska beginning October 22, 1990 and continuing (System File S-419/910143).
- (2) The Carrier violated the December 11, 1981 Letter of Understanding when the Carrier failed to make a good-faith effort to reduce the incidence of subcontracting and increase the use of their Maintenance of Way forces.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Roadway Machine Operators P. D. Brown and D. K. Melius shall each be allowed '*** an equal proportionate share of the man hours worked by the outside contracting forces in performing the aforementioned operation of designated Roadway Equipment at their respective Group 19 straight time and overtime rates of pay as compensation for the loss of work opportunity suffered' during the period the contractor forces performed said 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 June 13, 1990, the Carrier advised the Organization of its:

"... intent to solicit bids to cover improvements to the eastbound locomotive servicing facility at North Platte, Nebraska. Included in this work is pile driving, new gantry sanding system, concrete work, installation of new pumping and piping systems, tank and sewer lines."

By letter dated June 19, 1990, the Organization objected to the Carrier's actions and requested a conference. Conference was held on July 16, 1990, without resolution. The contractor commenced working on October 22, 1990.

Given the above, the Carrier's advance notice and conference obligations under Rule 52(a) were met.

We are satisfied that the type of work involved in this dispute is of a nature similar to the kind this Board has found the Carrier can contract out. Third Division Awards 27010, 29309, 30193, 30287. Those Awards are not palpably in error and shall be followed. The type of equipment used in this matter does not sufficiently distinguish this case from the work performed in previously decided matters. Because of the previously decided cases which were premised upon the established past practice of the Carrier of contracting out similar work with the Organization's acquiescence, the Organization's assertion that the Carrier violated the December 11, 1981 Letter of Understanding concerning reducing subcontracting cannot be maintained.

The claim will be denied.

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 19th day of January 1996.