

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31287
Docket No. MW-30412
95-3-92-3-155

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
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(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 (Weilder Williams Construction and T. R. Trenching Company) to rehabilitate a concrete bridge at Mile Post 19.88 commencing November 12, 1990 and continuing (System File S-446/910252).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper and timely advance written notice of its intention to contract out said work and failed to 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, Roadway Equipment Operators R. L. Wehrer and C. D. Steuben and B&B Carpenters J. M. Cheek, D. D. Carruthers, L. S. Kosmicki and J. D. Shepard shall each be compensated at their respective rates of pay for an equal proportionate share of the total number of man-hours expended by the outside forces commencing November 12, 1990 and continuing until the violation ceases."

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 October 31, 1990, the Carrier notified the Organization of its "... intent to solicit bids to cover repair of concrete damage of the west abutment, installation of sheet pile to protect the east abutment from scour damage and injection of concrete abutments on Bridge No. 19.88 located on the Railroad's Council Bluffs Subdivision, near Omaha, Nebraska." By letter dated November 9, 1990, the Organization objected to the Carrier's actions and requested a conference "... be scheduled and held prior to the work being assigned to and performed by a contractor, for the purpose of discussing the matters relating to said contracting transaction." By letter dated November 19, 1990, the Carrier agreed to meet. Conference was held on December 5, 1990, without resolution.

The Carrier commenced working on November 12, 1990.

With respect to the type of work involved, see Third Division Award 29782 which denied a claim for the contracting out of similar work. That Award is not palpably in error and shall be followed.

With respect to the Carrier's notice and conference obligations as required by Rule 52(a), the scenario in this case is the same as the one discussed in Third Division Award 31284 - i.e., less than 15 days' advance notice by the Carrier of its intent to contract out the work and notification by the Carrier of willingness to meet and conference after the work had commenced. For reasons set forth in Award 31284, the claim will be sustained and make whole relief directed for the loss of work opportunities for Claimants in furloughed status, if any.

The matter is therefore remanded to the parties for a joint check of the Carrier's records to determine the number of hours the contractor performed the work, whether Claimants were on furlough, the length of any such furloughs and whether those furloughs overlapped the time the contractor performed the work in dispute. Only the furloughed Claimants holding seniority at the time the contractor performed the work shall be entitled to relief. Those furloughed Claimants shall be made whole for the number of hours the contractor performed the work.

AWARD

Claim sustained in accordance with the Findings.

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 19th day of January 1996.