

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31288
Docket No. MW-30413
95-3-92-3-156

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 assigned outside forces (Shurigar Dirt Construction Incorporated) to haul fill material and do the necessary grading work in connection with a construction of a roadbed for a new track siding at South Bayard, Nebraska beginning October 1, 1990 and continuing (System File S-428/910184).
- (2) The Agreement was further violated when the Carrier failed to timely meet with the General Chairman 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, Eastern District Roadway Equipment Operators D. J. Kobza, C. D. Skala, D. K. Melius and R. M. Angelo shall each be allowed pay at their respective rates of pay for an equal proportionate share of all straight time and overtime hours expended by the outside forces beginning October 1, 1990 and continuing until the violation ceases to exist."

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 notice dated September 11, 1990, the Carrier advised the Organization of its "... intent to solicit bids to cover the construction of grading, installation and extension of culverts, install sub-ballast, and construction of 1800 feet of right-of-way fence for a siding at South Rayard, Nebraska." By letter dated September 17, 1990, the Organization objected to the Carrier's intended actions and requested a conference "... prior to the work being assigned to and performed by a contractor." By letter dated September 23, 1990, the Carrier agreed to meet with the Organization in conference to discuss the notice. Conference was held on October 5, 1990, without resolution.

The Contractor commenced working on October 1, 1990.

We are satisfied that notwithstanding the Organization's assertion that the work is scope covered, the Carrier has the right to contract out the type of work involved in this dispute. See Third Division Award 31286 and Awards cited therein.

However, notwithstanding the Carrier's right to contract out the work because it has done so in the past with the Organization's acquiescence, we are not satisfied the Carrier met its conference obligations. Rule 52(a) requires that after the Carrier gives the Organization notice of its intent to contract out work, "[i]f the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the Company shall promptly meet with him for that purpose." After receiving the Carrier's September 11, 1990 notice, on September 17, 1990 the Organization requested a conference "prior to the work being assigned to and performed by a contractor." The contractor began working on October 1, 1990. However, the Carrier did not conference the matter until October 5, 1990—after the work began. There is nothing in the record to demonstrate that the fault for the delay was the Organization's.

Because the Carrier failed to meet its conference obligations under Rule 52(a), under the circumstances, the claim shall be sustained, but only for those Claimants on furlough at the time the contractor performed the work. See Third Division Awards 31031 and 31025.

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.