

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32310
Docket No. MW-31425
97-3-92-3-956

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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 to perform basic roadway machine operator's work (building berm, grading and constructing roadbed) between approximately Mile Post 297.50 and Mile Post 301.50 on the Nebraska Division from October 3, 1991 and continuing (System File S-598/920038).
- (2) The Agreement was further violated when the Carrier 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, Group 19 Roadway Machine Operators B. L. Sauvage, P. D. Brown, D. L. Squibb, D. D. Dickinson, M.A. Magnett, T. L. Reikofski, C. D. Skala, L. J. Doebele, A. L. James and Group 15 Truck Drivers K. L. Williams, D. B. Wilken, L. H. Wilson and J. E. Mumm shall each be allowed ‘... an equal proportionate share of the man hours worked by the outside contracting forces in performing the referred to operation of designated Roadway Equipment and Trucks at their respective Group 19 and Group 15 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 were given due notice of hearing thereon.

As characterized by the Organization, "Beginning on October 3, 1991, the Carrier assigned an outside concern to operate heavy equipment and heavy duty trucks in connection with the work of building grade and berms preparatory to the relocation of trackage between Mile Posts 297.50 and 301.50 on the Nebraska Division."

There is no question here that the Carrier gave timely notice and held a conference on the matter upon request of the General Chairman.

The Board need not and should not go beyond the conclusions of numerous previous Awards concerning similar projects. These Awards hold that the nature and extent of the particular work, together with established past practice, validate the Carrier's use of contractors under the provisions of Rule 52. As examples, the Carrier cites Awards 27010, 28619, 28622, 30193, 30210, 31286, 31288, and 31721. Some of these are sustaining Awards based solely on the Carrier's failure to give advance notice as required by Rule 52; such is not the case here.

The Board finds no distinguishing characteristics in the facts here under review to reach a conclusion contrary to the Awards cited above.

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 13th day of November 1997.