

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32534
Docket No. MW-31890
98-3-94-3-168**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(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 (Prairie Construction and Interior Construction) to perform Bridge and Building Subdepartment work (remodeling and installation of a second floor in the northeast portion of the Ice House) at Council Bluffs, Iowa beginning November 30, 1992 and continuing (System File H-25/930242).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper advance written notice of its intention to contract out said work and failed to make a good-faith effort to reduce the incidence of contracting out scope covered work and increase the use of its Maintenance of Way forces as required by Rule 52(a) and the December 11, 1981 Letter of Understanding.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Nebraska Division B&B Group 3 Carpenters S. M. Foster, J. M. Cheek and R. D. Cutsor shall each be allowed pay at their Group 3 straight time rates for an equal proportionate share of the total number of man-hours expended by the outside forces beginning November 30, 1992 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 were given due notice of hearing thereon.

The work of remodeling and constructing office facilities on the second floor of the Ice House in Council Bluffs, Iowa, began on November 30, 1992 by outside contractors. The Organization filed this instant claim alleging that the Carrier violated the Agreement by removing work from the employees, failing to give proper notice and failing to make an honest effort to increase the use of Maintenance of Way forces under the agreed upon December 11, 1981 Letter of Understanding. The Organization maintained that the specific work was Bridge and Building (B&B) Subdepartment work under the Scope Rule of the Agreement and could not be contracted out as none of the conditions of Rule 52 could be met by the Carrier.

The Board has carefully reviewed all of the evidence and Awards presented in the case at bar. With respect to Part 1 of the instant claim, there is ample Award support holding that the work herein disputed is work which the Carrier has a right to contract out (Third Division Awards: 28610, 29037, 31035, 31283, 31284). These Awards involve the same issues, parties to this dispute and similar circumstances. This is a general Scope Rule and not specific. The inclusion of the language of Rules 8, 9 and 10 does not restrict the Carrier in the manner argued by the Organization. The evidence of record does not prove that the employees have the sole right to perform the work herein disputed. Therefore, Part 1 of the claim cannot be sustained.

As for Part 2 of the claim, the Board has reviewed the Carrier's October 30, 1992 letter of intent to contract out the work in dispute. The Board finds the letter satisfies all the requirements of putting the Organization on notice under the Agreement.

Clearly, the Organization was given proper information of the Carrier's intent to solicit bids for office facilities for a signal circuit card repair system in the old Ice House. The Organization was notified that under Rule 52, the Carrier was providing the requisite 15 days and intended to contract out under the provision stating that: "Nothing contained in this rule shall affect prior and existing rights and practices of either party in connection with contracting out." With regard to our review of the December 11, 1981 Letter of Understanding, it is not applicable. Part 2 of the claim is denied.

Accordingly, after full and careful review of the entire record, evidence and Awards, the Board finds that the claim must fail. The Carrier notified the Organization of its intent to contract out work which this Division has held is proper to contract out. The Agreement has not been violated.

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 25th day of March 1998.