

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32744
Docket No. MW-30303
98-3-92-3-31**

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
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Determan and Merrill Contractors) to perform cutting and welding work between Mile Post 149 and Mile Post 128 from September 27 through October 19, 1990 (Carrier’s File 910158 MPR).**
- (2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it failed to furnish the General Chairman with proper advance written notice of its intention to contract out said work.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, furloughed Welder John Marks shall be compensated at the welder’s rate of pay for all hours worked by the contractor’s forces on September 27 thorough October 19, 1990.”**

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.

By notice dated December 28, 1989, the Carrier notified the Organization that:

“This is to advise of the Carrier’s intent to solicit bids to cover the removal of trackage and appurtenances on the Oklahoma Subdivision between Muskogee, Oklahoma (MP 130.00) and KOG Junction, Oklahoma (MP 297.6) in conjunction with Company forces. Estimated duration of project will be between six to twelve months.”

By letter dated January 29, 1990, the Organization acknowledged receipt of the notice and confirmed that a conference was held on December 28, 1989 where the Organization objected to the contracting. The Organization further contended in its January 29, 1990 letter that the notice was vague.

With respect to notice, as confirmed by the Organization’s January 29, 1990 letter, we find that notice of contracting was given and conference between the parties was held as specified in Article IV. We further find that the notice was sufficiently specific.

As to the merits of the contracting action, on the property in its June 10, 1991 letter, the Carrier stated that “[t]he fact is the Organization has long acquiesced to this work without benefit of notice and it is only in the last few years that any claims have been progressed. . . .” Therefore, the record establishes that this kind of work has been contracted in the past without objection by the Organization. As the Awards have developed on this property, in such circumstances the claim must be denied.

The Carrier’s other arguments are moot.

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 23rd day of September 1998.