

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23035  
Docket Number M-23070

Rodney E. Dennis, Referee

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way **Employees**  
(  
(The Western Pacific Railroad Company

**STATEMENT OF CLAIM:** "Claim of the System Committee of the **Brotherhood** that:

(1) The Carrier violated the Agreement when it assigned Engineering **Department** forces to pump water **from** a ditch at Oakland Yard January 3 **through** January 20, **1978** (Case **No. 11315-1978-EWE**).

(2) Water **Service** Maintainer George Saraba be allowed one hundred twelve (**112**) hours of pay at his straight-time **rate** because of the violation referred to in Part (1) hereof."

**OPINION OF BOARD:** on **November 3, 1977**, Carrier **advised** the General Chairman, **pursuant** to Article IV of the May 17, **1968, National** Agreement, that it intended to contract out certain work in **the Oakland Yard**. The Organization lodged no protest over the subcontract. The contract was awarded and while the contractor was engaged **in** the installation of the sub-surface drainage system, the **area** experienced a heavy rainfall. Pumps were brought in to **drain** the **ditches** and keep them drained so that **work** could **continue**. To keep the **pumps** in operation when required, the contractor requested that Carrier emergency inspectors assist in the operation of the **pumps**. They did so.

**Claimant**, a water service maintenance man, alleged that he **should** have been assigned to operate the pumps to pump out the ditches **for** the **contractor**. He claimed **112** hours of pay, the time **during** which the pumps were operated from January 3 to January 20, **1978**.

Carrier **denied** the claim at every level. It was pressed by the union to the Board for resolution.

After a thorough review of the record before us, it is this Board's opinion that Carrier must prevail in this case. There is no question that the work **in** question here **was subcontracted** and that the Organization

did not contest the subcontracting of the work. Carrier! 5  
**November 3, 1977** letter to the General Chairman clearly states that:  
This contract will also include necessary drainage work. Once this  
work had **been subcontracted**, **Carrier no longer** had control of same  
and the Organization **cannot** later be heard to claim it.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole  
record and all the evidence, **finds** and holds:

That the parties waived oral hearing;

That the Carrier and the **Employees** involved **in** this dispute  
are respectively Carrier and **Employees** within the meaning of the Railway  
Labor Act, as approved **June 21, 1934**;

That this Division of the Adjustment Board has jurisdiction  
over the dispute involved herein; and

That the Agreement was **not** violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A. W. Paulsen*  
Executive Secretary

Dated at Chicago, **Illinois**, this 28th day of October 1980.