

The Third Division consisted of the regular members and in addition Referee John B. **LaRocco** when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(Southern Pacific Transportation Company
(Eastern Lines)

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

(1) The Carrier violated the Agreement when it assigned outside forces to remove a section of track and to haul fill between Mile Post 20 and Mile Post 23 in the vicinity of Sugarland, Texas on January 24, 1983 (System File MW-83-18/381-38-A).

(2) The Carrier also violated Article 36 when it did not give the General Chairman advance written notice of its intention to contract said work.

(3) Laborer-Drivers J. D. Lewis and K. Conrad and Machine Operators D. V. Keeling, C. E. Nash and C. N. **Garza** shall each be allowed eight (8) hours of pay at their respective straight time rates because of the violation referred to in Part (1) hereof."

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 employees 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.


As part of a flood control project along Sugar Creek near Sugarland, Texas, the Fort Bend County Municipal Utility District retained Tru-Con Construction Company to haul and place land fill after Carrier Maintenance of Way forces removed track and dismantled a trestle at Mile Post 22.39. After **Tru-Con** completed its fill work, Carrier workers replaced the rails. The Utility District reimbursed the Carrier for expenditures (in labor and materials) associated with the work performed by Carrier personnel on the flood control project.

The record reflects that the Carrier was uninvolved in the contractual relationship between the Utility District and Tru-Con Construction ~~Com-~~pany. The Utility District initiated the special project and exercised sole control over the selection of the outside contractor. The contractor did not receive any payment from the Carrier. Indeed, the Utility District reimbursed the Carrier for the costs it incurred to **participate** in the project. The Carrier was neither a principal nor an agent in the transaction between the Utility District and the outside entity. Third Division Award No. 23422. Moreover, there is no evidence that the Carrier would have undertaken this project absent the impetus from the Utility District because the purpose of the construction project was to prevent water overflow in Sugar Creek. The benefits of the project accrued exclusively to the governmental unit as opposed to the Carrier. Since the Carrier lacked any control over work performed by Tru-Con and the Carrier did not derive any material benefit from the transaction, the Carrier was not under any obligation to provide the General Chairman with notice under Article 36. Third Division Awards 24078, 20644, 20280 and 19957. In summary, the Carrier did not subcontract any work.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Devitt - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1988.