

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31591
Docket No. MW-30804
96-3-92-3-617**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former
(Oklahoma, Kansas & Texas Railroad Company)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned an outside contractor (Woods Dirt Construction) to operate a backhoe tractor to tear out and replace crossings between Medford and Pond Creek beginning May 13 and continuing through July 3, 1991 (System File MW-91-40-OKT/910578 OKT).

(2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it failed to furnish the General Chairman with a proper advance written notice of its intent to contract out the work described in Part (1) above and failed to afford a conference as contemplated by said Agreement.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Machine Operator C. F. Hill shall be compensated at the applicable machine operator's rate of pay for an equal proportionate share of both the straight time and overtime hours worked by the outside contractor's forces in the performance of the work described in Part (1) above."

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 waived right to appearance at hearing thereon.

The record evidence in this case persuasively established that Carrier did, in fact, provide the advance written notice required by Article IV of the May 17, 1981 National Agreement, as augmented by the Berg-Hopkins Letter of December 11, 1981. The Organization responded with a request for conference, which Carrier acknowledged and placed on the agenda for the next regularly scheduled conference; or, alternatively, for an earlier conference should the Organization desire. So far as the record shows, the Organization took no further action to pursue the proffered conference and the matter apparently never was conferenced. The same facts, issues and Parties were involved in the partial denial of identical claims by this Board in Third Division Award 31015. The same result is dictated by the record in this case.

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 29th day of August 1996.