

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32097
Docket No. MW-31660
97-3-93-3-682**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers 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 (JIMCO Inc.) to perform Maintenance of Way work (removing damaged track structure) at the Yermo, California Yard on August 11, 12, 13, 14 and 17, 1992 (System File R-87/930013).**
- (2) The Agreement was further violated when the Carrier failed to timely furnish the General Chairman with proper advance written notice of its intention to contract out said work as contemplated by Rule 52(a).**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Western District Roadway Equipment Operator R. D. Yoder shall be allowed fifty-two and one-half (52 1/2) hours' pay at the Class 2 Roadway Equipment Operator's straight time rate.”**

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.

On August 11, 12, 13, 14 and 17, 1992, the Carrier hired an outside contractor to remove damaged track materials and handle the replacement of rail, crossties, ballast and dirt and general grading work in restoring a switch at Mile Post 162.5 at the Yermo, California Yard.

The Organization filed the instant claim contending that the Carrier violated Rules 1, 2, 3, 4, 5 and 10 when it hired the outside contractor. The Organization argues that work of this nature has been customarily, historically and traditionally been assigned to and performed by the Roadway Equipment Subdepartment employees. The Claimant was willing and able to perform the work in question but was not afforded the opportunity to do so. Furthermore, the Organization argues that the Carrier is required under the provisions of the Agreement to give at least 15 days' notice to the General Chairman of its intent to contract out work. In this case, the Organization contends that Carrier failed to do so.

The Carrier denied the claim contending that there was no violation of the Rules because the work involved was emergency repairs to damaged track as a result of a derailment which shut down the mainline for 24 hours. Because Carrier forces were employed on other necessary projects and were not readily available to assist in the repair work, the Carrier proceeded to hire an outside contractor to perform the work in question. Because the work was the result of a derailment, the Carrier maintains that it was not required to issue a notice to the General Chairman in accordance with Rule 52(c). Moreover, the Carrier points out that the Claimant suffered no loss in pay.

The Board reviewed the record and finds that there was track that had been damaged by a derailment which constituted an emergency. Rule 52(c) provides that the Carrier does not have to provide notice to the Organization when it contracts out work associated with a derailment. In this case, the derailment constituted an emergency and the Carrier had no contractual obligation to utilize its own forces to repair the damage. See Third Division Awards 29965, 29999 and 30000.

For all of the above reasons, the claim is denied.

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 9th day of July 1997.