

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32272
Docket No. MW-31618
97-3-93-3-623**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Missouri
(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 (Marlatt Contracting) to perform Maintenance of Way machine operator's work (installing switchties and cleaning up debris) at the North Lead located in front of the tower in the St. Joe Terminal on August 10, 11, 12, 13, 14, 19, 20 and 21, 1992 (Carrier's File 930001 MPR).**
- (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 intention to contract out said work.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Machine Operator M. L. Fitzgerald shall be allowed eight (8) hours' pay at the machine operator's straight time rate for each day claimed.”**

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.

Beginning August 10, 1992, the Carrier hired an outside contractor to install switchties using a backhoe at Mile Post 465.47. Said work was performed by one employee of the outside contractor and was completed on August 21, 1992.

The Organization filed the instant claim contending that the work in question has historically and customarily been performed by BMW forces. The Organization points out that the Claimant was fully qualified, available and willing to perform the work in question. Furthermore, the Organization argues that the Carrier did not give proper notice to the General Chairman of its intent to hire an outside contractor.

The Carrier denied the claim contending that it has the right to subcontract the work at issue and also that the Claimant in this case was fully employed during the dates in question, and therefore, lost no pay because of the use of the outside contractor. Furthermore, the Carrier argues that its notice of intent to use an outside contractor was served on the Organization by letter dated July 23, 1992.

The parties being unable to resolve the issues at hand, this matter came before this Board.

This Board has reviewed the record in this case and we find that the Carrier issued a proper notice on July 23, 1992, that it would be subcontracting the work at issue. A conference was held on July 28, 1992. The work was not begun until August 10, 1992, after the parties had an opportunity to discuss it. Consequently, there was no notice violation here by the Carrier.

With respect to the substantive issue, this Board has held on numerous occasions that the Carrier has a right to subcontract work connected with the replacement of ties and general clean up work. The Carrier has cited numerous previous Awards in its

Submission, including Third Division Awards 28849, 29302, 31275, and 31285, to support its position in this case. We believe that this case is very similar and the previous decisions should be followed.

In summary, the Organization has failed to meet its burden of proof that the Carrier violated the Agreement when it subcontracted the work of replacement of ties and cleanup in August 1992. Therefore, the claim must be 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 7th day of October 1997.