

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32273
Docket No. MW-31619
97-3-93-3-624**

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 (operating a backhoe and a dozer) in connection with the unloading and distribution of rock in the vicinity of Mile Post 405.50, Old Omaha Division on August 15, 1992 (Carrier’s File 930008 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 Operators K. D. Eichelberger and G. H. Hill shall each be allowed ten (10) hours’ pay at the machine operator’s time and on-half 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 15, 1992, the Claimants' rest day, the Carrier hired an outside contractor to unload and distribute large rock near Mile Post 405.50. The contractor's employees worked ten hours and used a backhoe and a D-3 dozer to complete the work in question.

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 Claimants were 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 had hired an outside contractor to provide a bull dozer and a backhoe to perform the work in question to eliminate slowed train traffic due to wash outs that had occurred along a large portion of track because of previous heavy rainfall in the area. The Carrier argued that it had the right to subcontract the work because of the emergency situation that existed.

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 work that was the subject of the contracting out dispute related to the Carrier's attempt to deal with heavy rains and flooding that had washed out track at various locations. At the time, the trains were all subject to slow orders in the affected area. The Carrier has shown that an emergency did exist. We find that it is not necessary that the line be completely shut down in order for an emergency situation to exist. We also find that the fact that there was no notice served does not require a sustaining award because in this situation the emergency conditions required immediate action.

In addition, this Board finds that the type of work that was subcontracted by the Carrier has been found in the past to be a legitimate area for subcontracting by the Carrier. The work involved in this dispute required track and road bed repair, removing and replacing ties, clearing the right of way, and distributing and replacing switchties. Numerous Third Division Awards in the past have upheld the Carrier's right to subcontract that type of work.

This Board finds that the Organization has not met its burden of proof in this case, and therefore, 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.