

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32277
Docket No. MW-31679
97-3-93-3-708**

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**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned or otherwise permitted employees of an outside contractor (Brennan Construction Company) to perform Maintenance of Way and Structures Department work of preparing, forming, pouring and finishing of concrete floor one foot by thirty feet (1' x 30') in Bay ten of the Maintenance of Way Repair Shop at Pocatello, Idaho on September 15, 16, 17 and 21, 1992 (System File R-109/930055).**
- (2) The Agreement was further violated when the Carrier failed to provide proper and timely advance written notice of its intent to contract the specific work involved herein or to hold good-faith discussions prior to the contracting transaction.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, furloughed Idaho Division First Class B&B Carpenter W. S. Wallace shall be allowed thirty-three (33) hours' pay at his 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.

This claim arose when the Organization took exception to the Carrier's use of an outside contractor to construct a 1' x 30' concrete pad at the Pocatello, Idaho Repair Shop on September 15, 16, 17 and 21, 1992. The Organization argued that this type of work has customarily, historically and traditionally been performed by the B&B subdepartment. The Organization contended also that the Claimant was fully capable and available to perform the work in question. Furthermore, the Organization argued that the Carrier violated the Agreement when it issued a notice to the Organization that "had absolutely no relevance to the instant case."

The Carrier denied the claim contending that it has a long established practice of contracting out masonry work of this nature. Further, the Carrier points out that the Claimant was fully employed and working on other projects for the Carrier on the dates in question.

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 has met the notice requirements. The record reveals that a notice was served on the Organization on July 16, 1992. A conference was eventually held on August 19, 1992. The work did not begin until September 15, 1992.

With respect to the substantive issue, this Board finds that the work performed in this case was concrete work. The Carrier has relied upon 12 Awards that hold that it has the right to contract out concrete work. See Third Division Awards 28623, 30262, 30287, 31000, 31027, and 31028. We can see no reason to find differently in this case.

Since the Organization has not met its burden of proof that the Carrier violated

the Agreement when it contracted out the concrete work, this Board must deny the claim.

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.