

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32561
Docket No. MW-31762
98-3-94-3-16**

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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 outside forces (Commercial Door Installers) to perform Steel Erection Subdepartment work (installing an electric roll-up door in the north end of the North No. 1 canopy of the locomotive facility, i.e., the Diesel Shop) at Salt Lake City, Utah on October 10, 1992 (System File H-6/930143).**
- (2) The Agreement was further violated when the Carrier's advance written notice of its intention to contract out said work was improper and when it failed to make a good-faith effort to reduce the incidence of contracting out scope covered work and increase the use of its Maintenance of Way forces as required by Rule 52(a) and the December 11, 1981 Letter of Understanding.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Western District Steel Erection employee R. L. Winn shall be allowed three and one-fifth (3 1/5) hours' pay at the steel erection foreman's straight time rate, Western District Steel Erection employees J. L. Smith and R. R. Eden shall each be allowed three and one-fifth (3 1/5) hours' pay at the bridge welder's/arc welder's straight time rate, Western District Steel Erection employee J. F. Berg shall be allowed three and one-fifth (3 1/5) hours' pay at the 1st Class Steel Bridgeman's straight time rate and Western District Steel Erection employee T. F. Sweat shall be allowed three and one-**

fifth (3 1/5) hours' pay at the steel bridgeman's/machine 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.

The Carrier provided timely advance notice of its intention to contract to outside forces the work cited in the Statement of Claim. The Board finds the notice adequately meets the requirement of Rule 52(a). Conference was held with the General Chairman, at which the parties did not reach an "understanding" concerning the work.

While the Organization relies on Rule 52(a), other Rules, and the December 11, 1981 Letter of Understanding, the Carrier emphasizes Rules 52(b) and (d), which read as follows:

"(b) Nothing contained in this rule shall affect prior and existing rights and practices of either parties in connection with contracting out. Its purpose is to require the Carrier to give advance notice and if requested, to meet with the General Chairman or his representative to discuss and if possible reach an understanding in connection therewith.

(d) Nothing contained in this rule shall impair the Company's right to assign work not customarily performed by employees covered by this Agreement to outside contractors."

There have been many Awards concerning this Carrier's contracting of work. Where notice has been lacking, is untimely, or in improper form, Awards have sustained

the Organization's position. See Third Division Awards 31283 and 31284, as examples. Likewise, there are sustaining Awards where the Carrier's explanation of previous practice has been unconvincing. In this instance, however, the Board finds no unique or unusual circumstances to warrant departure from a long line of denial Awards.

Among these denial Awards in Public Law Board No. 5546, Award 11, involving the same nature of work and the same parties. PLB No. 5546, Award 11 concluded as follows:

"The Board has reviewed all of the arguments in this case, and we find that the Organization has not met its burden of proof that the Carrier was in violation of the Agreement when it subcontracted the work involved. We find that the Carrier served proper notice of its intent to subcontract, and the Carrier had an established past practice of subcontracting this type of work."

To similar effect is Third Award 31035, which cited a number of other denial Awards.

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 April 1998.