

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32791
Docket No. MW-32064
98-3-94-3-381**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company
((Eastern Lines)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned an employee of an outside concern (Pacer Trucking Company) to perform Maintenance of Way work in connection with the hauling of 2 pallets of switch machine from the System Signal Shop in Houston, Texas to El Paso, Texas on May 28, 1993 and the return trip from El Paso to Houston, Texas on May 29, 1993 (System File MW-93-65/MW 93-132 SPE).**
- (2) The Agreement was further violated when the Carrier failed to give the General Chairman proper advance written notice of its intention to contract out the work in question in accordance with Article 36.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Machine Operator B. L. Firasek shall be allowed eight (8) hours' pay at his straight time rate and twenty-two (22) hours' pay at his time and one-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.

The contract language in this dispute, Article 36 of the Agreement between the Parties, is clear and unambiguous. Specifically, it provides in pertinent part that:

"In the event this carrier plans to contract out work within the scope of the applicable schedule agreement, the carrier shall notify the General Chairman of the organization involved in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than 15 days prior thereto."

It is unrefuted on this record that the Carrier failed to give the requisite notice to the General Chairman. Furthermore, the Carrier's defense that the work at issue was not reserved to Maintenance of Way Employees has been addressed and resolved previously on this property. Third Division Awards 31260, 31266, 31562, e.g. In light of the foregoing, the Board has no choice but to sustain the claim.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of September 1998.