

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33467
Docket No. MW-32500
99-3-95-3-317**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

**(Brotherhood of Maintenance of Way Employes
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 (Coleman Industrial & Adams Construction) to perform Maintenance of Way and Structures Department work in connection with concrete work and construction of a steel building at the La Grande, Oregon Yard beginning on November 8, 1993 and continuing (System File C-11/940196).**
- (2) The Agreement was further violated when the Carrier failed to timely furnish the General Chairman with proper advance written notice of its intention to contract out said work or afford the General Chairman a meeting to discuss the work referred to in Part (1) above, prior to the contracting out of said work, as contemplated by Rule 52(a).**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Northwestern District Steel Erection employees H. S. Role, J. D. Bowen, K. E. Murphy, R. R. McDonald, D. R. Scoville, S. E. Burgus and Oregon Division Bridge and Building Subdepartment employees B. L. Roberts, E. T. Hughes, D. D. Boslau and R. Moreno shall:**

‘*As compensation for loss of work opportunity each Claimant should be paid fifty four and four-fifths (54 4/5) hours at his respective straight time rate of pay and thirty seven and two-fifths (37 2/5) hour and (sic) the**

time and one-half rate of pay for time worked by outside forces when the Carrier failed to assign Bridge and Building Subdepartment forces the concrete work and construction of a steel building to cover the waste oil treatment plant and related work at La Grande Oregon Yard starting on November 8, 1993. This claim is considered continuous as the building is not finished.’”

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.

By letter of July 27, 1993, Carrier’s Manager Contract Services notified the BMW General Chairman of Carrier’s intent to solicit bids to contract certain work at La Grande, Oregon, specified as “. . . furnishing labor, equipment and materials to perform demolition and associated construction for the waste water treatment plant.” General Chairman Wehrli and Carrier Representative Hallberg met in conference on August 3, 1993, to discuss the proposed contracting, following which by letter of August 3, 1993 the General Chairman filed a written protest that “the notice was procedurally defective and the Organization could not reach an Agreement with the carrier to allow it to contract out this work customarily performed by Maintenance of Way employees” Carrier proceeded to contract with Coleman Industrial & Adams Construction and the demolition and reconstruction work at issue commenced at La Grande on November 8, 1993. Thereafter, the General Chairman filed the instant claim on January 3, 1994, which echoed and expanded upon the allegations contained in his August 3, 1993 letter of protest, including a detailed description of the concrete footing and wall work and steel building fabrication which is claimed under the Scope Rule.

Careful analysis of the record evidence leaves us unpersuaded that the July 27, 1993 letter of notice was procedurally defective or substantively inadequate under Rule 52 (a) or the December 11, 1981 Letter of Agreement. See Third Division Awards 30185, 30063 and 29981. Similarly, the Organization has not carried its burden of persuasion on this evidentiary record with regard to the alleged violation of Rule 1-Scope. In that connection, this Board held in Third Division Award 32333 as follows:

“The ability of the Carrier to contract out concrete work under Rule 52(b) has been upheld in Third Division Awards 31730, 31651, 31287, 31172, 31035, 31029, 31028, 30287 and 30262. Given the practice established on this property for the kind of contracting out involved in this case, there is no basis for determining that these Awards are palpably erroneous. In the interests of stability, we shall follow their holdings.”

See also Third Division Award 32433 . Nothing in the present record provides any basis for deviating from the cited line of authoritative precedent involving these same Parties, the same issues, essentially identical facts and the same contract language.

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 22nd day of September 1999.