

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35855
Docket No. MW-35344
01-3-99-3-209**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

PARTIES TO DISPUTE: (**(Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former 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 or otherwise allowed an employee of the City of Weimar, Texas to perform Maintenance of Way work (load and haul dirt and material) in connection with the installation of main line crossings between Glidden, Texas (Mile Post 87.01) and Nolte, Texas (Mile Post 180.00) and in the vicinity of Weimar, Texas (Mile Post 99.06) on September 15 through 19, 1997 and on September 22 through 26, 1997 (System File MW-98-40/1111989 SPE).**
- (2) The Agreement was further violated when the Carrier entered into the above-described contracting transaction without giving the General Chairman at least fifteen (15) days' advance written notice of its plan to do so as set forth in Article 36.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Machine Operator F. V. Lopez shall now be compensated ‘ . . . for Eighty (80) hours at his respective straight time rate of pay and for Twenty (20) hours at this respective overtime rate of pay. . . . ’”**

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 instant claim alleges that on September 15 through 19, 1997 and September 22 through 26, 1997, the Carrier contracted out work with the City of Weimar, Texas. The claim contends that the City used a 14-Yard Dump Truck "to load dirt while cleaning the right of way in the vicinity of Weimar TX and moved the crossing material to install in the crossings on the main line track, in the vicinity of Weimar TX., mile post 99.09." The Organization alleges dual violations of Rule 1, the Scope Rule of the Agreement, and of the notice requirements of Article 36, as augmented by the Berge/Hopkins letter of December 11, 1981.

Careful review of the record shows that there is a disputed issue of material fact. The Organization contends that outside employees performed work in connection with the installation of main line crossings. The Carrier specifically denied that such work took place. The Carrier's denial was corroborated by F. Parks, City Manager of the City of Weimar, Texas, who provided a detailed explanation of the work that was performed, the reasons it was performed, and how it was performed. With respect to the particular installation work alleged by the Organization to have been performed, Parks wrote: "City trucks or city workers were not used to transport any new crossing or other railroad material."

Given this factual impasse, it is clear that the record presents irreconcilable disputes of fact which are central to the disposition of the claim. Because the Organization, as the moving party in this dispute, failed to meet its evidentiary burden

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of proving the essential elements of its case, the Board has no alternative but to deny the claim. See Third Divisions Awards 33895, 33951, 35440 and 35496.

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 18th day of December, 2001.