

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36160
Docket No. MW-35786
02-3-99-3-773**

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (formerly The Denver
(and Rio Grande Western 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 (Tuff Shed) to perform Maintenance of Way work (construction of a utility building) at the Burnham Locomotive Shop complex in Denver, Colorado beginning June 17 and continuing through June 23, 1998 (System File D-98-41C/1157515 DRG).**
- (2) The Agreement was further violated when the Carrier failed to meet with the General Chairman regarding its intent to contract out the work in Part (1) above as required by Appendix D of the Agreement.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants D. E. Smith, G. L. Wiese and H. J. Deputy shall now be compensated at their respective rates of pay for an equal and proportionate share of all hours worked by the outside forces in the performance of said work between June 17 and 23, 1998.”**

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 Organization relies on Appendix D as related to construction by an outside firm of a 10' by 12' utility shed for use on the Carrier's property. Appendix D concerns the Carrier "plans to contract out work within the scope the applicable schedule agreement" and the requirement to provide 15-day advance notice.

The reliance on Appendix D in this instance is without foundation. The Carrier purchased the pre-assembled building from a vendor, the arrangements for which included a warranty under condition that the assembly was performed by the vendor. Thus, the issue is whether Agreement prohibits the Carrier from the purchase of goods and equipment; this is readily distinguishable from the contracting of scope-covered work. The Board finds no Rule support in Appendix D or elsewhere for denial of the Carrier's right to purchase manufactured goods (in this instance, utility shed) as an alternative to having such items constructed by its own forces.

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 20th day of August 2002.