

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36514
Docket No. MW-35886
03-3-99-3-894**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company [former Southern Pacific
(Transportation Company (Western Lines))**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Herzog Construction Company) to distribute new and secondhand plates and other track material on the Suisun District beginning August 4, 1997 and continuing (Carrier’s File 1162223 SPW).**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with a proper advance written notice of its intent to contract out said work in accordance with Article IV of the May 17, 1968 National Agreement.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, System Work Equipment Operator D. P. Knotts shall be ‘. . . paid an equal amount of the total man hours worked by the Herzog Construction Company Car Top Material operator, which will be no less than the two hundred sixteen (216) straight time hours, and one hundred sixty-eight (168) overtime hours, already identified herein, at the Car Top Material Machine Operators, Class 05A, rate of pay. Compensation for this violation is continuous until the contractor is no longer employed to perform this work and will be in addition to any compensation Claimant may have already received.”**

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.

This claim alleges that the Carrier, without prior notice, contracted with an outside concern for the handling and distribution of tie plates and other track material on the Suisun District beginning on August 4, 1997 and continuing, in conjunction with what was referred to as the "Cal P Project." The Organization asserted in its claim that BMW-represented employees had performed this work utilizing Carrier equipment until they were sent off the project and outside forces were brought in.

The factual predicate in this case and the arguments advanced by the parties are substantially similar to Third Division Award 36516. Both cases involve the same parties and the same kind of work. The Board held in that case that the work was arguably scope covered and that, at minimum, notice should have been provided to the Organization before contracting out. Exclusivity was rejected as a defense for purposes of notice. After careful review, we find that there is no reason why the instant case should be treated any differently. Accordingly, this claim will be sustained.

AWARD

Claim sustained.

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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 April 2003.