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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37104
Docket No. MW-36519
04-3-00-3-761

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

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(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 (Parrish Company) to perform routine Maintenance of Way right of way work of cleaning right of way of ties between Soda Springs, Idaho and Bancroft, Idaho on the Pocatello Subdivision beginning on August 23, 1999 and continuing (System File J-9952-252/1211753).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper advance written notice of its intention to contract out said work and failed to make a good-faith attempt to reach an understanding concerning said contracting as required by Rule 52(a).
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Roadway Equipment Operators M. J. Dunn, G. L. Purkey, Truck Operator E. Ibarra, Foreman W. A. Webb, Sectionmen R. C. Sparks, M. M. Cantu, R. T. Mills, D. R. Balls, R. Rascon and D. R. Robinson shall now each be compensated “*** at his applicable straight time rate and overtime rate a proportionate share of the total hours worked by the contractor doing the work claimed as compensation for loss of work opportunity suffered from August 23, 1999, until

the contractor is removed from Company property or until the project is completed. ***"

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.

Although the true nature of this controversy did not become apparent in the early stages of the on-property record development, the respective positions of the parties became clear as of the conference held on September 22, 2000. The Carrier maintained that the tie removal in dispute was nothing more than the result of a sale of the ties on an "as is, where is" basis. The latter stages of the on-property record focused on this issue. A copy of the applicable sale contract was provided to the Organization following its request for same. By its terms, ownership of the ties transferred to the purchaser at the time they were removed from the track structure.

It is well settled that a genuine sale of Carrier property on an "as is, where is" basis does not constitute an impermissible contracting of reserved work. See, for example, Third Division Awards 29559 and 30216. Because such sales do not involve work performed for the Carrier, the notice requirements pertaining to contracting of reserved work are not applicable.

On this record, the Organization did not provide any actual evidence to undercut the legitimacy of the "as is, where is" sale shown by the sale contract

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exchanged on the property. Accordingly, we have no proper basis for finding the Agreement was violated.

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 21st day of July 2004.