

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 37316  
Docket No. MW-36364  
04-3-00-3-546

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 Employes  
(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 (Jack Munn) to perform routine Maintenance of Way work of cleaning right of way of ties and debris between Mile Post 87.50 and Mile Post 145 on the Nebraska Division beginning on April 19, 1999 and continuing (System File W-9952-158/1200379).
- (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 L. E. Loya, T. B. Micek, Truck Drivers D. L. Callan and S. P. Wetz shall now each be “\*\*\* allowed an equal proportionate share of the man hours worked by the outside contracting force as described in this claim, at their respective Roadway Equipment Operators and Truck Operators Straight Time and Overtime rates of pay as compensation for the violation of the Agreement for hours worked by the outside contracting force in cleaning the Right of Way of scrap ties and debris.”

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, beginning April 19, 1999 and continuing, the Carrier used contractor forces (Jack Munn) to clean the right-of-way of used ties between Mile Post 87.50 and Mile Post 145.00 on the Council Bluffs Subdivision of the Nebraska Division. The arguments and evidence presented herein are virtually identical in all pertinent respects to the claim presented in Third Division Award 37315. The claim was resolved in the Organization's favor and there is nothing in this record to depart from that finding herein.

The only remaining issue that differentiates this case from the one cited is the additional argument raised by the Carrier concerning the pyramiding of claims. The Carrier argues that this claim duplicates Third Division Award 37315 in that the prior claim was on behalf of the same Claimants for the same time period. First, we note that the time period is not identical. More importantly, however, the Claimants' loss of work opportunity is equally applicable in both cases. There is no indication on this record that time was of the essence or that the Claimants could not have been scheduled to perform this work to meet the Carrier's needs. Accordingly, the claim will be sustained.

AWARD

Claim sustained.

Form 1  
Page 3

Award No. 37316  
Docket No. MW-36364  
04-3-00-3-546

**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 21st day of December 2004.**