

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37353
Docket No. MW-36987
05-3-01-3-567

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn 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 to perform Maintenance of Way and Structures Department work (break out concrete and auger holes to install sump pumps for new drainage system and re-pour concrete and related work) in Tunnel #5 at Curvo Mile Post 931.25 and in Tunnel #6 at Mile Post 931.35 commencing on June 5, through June 9, 2000 and continuing on June 12, through June 15, 2000, instead of Wyoming Division Group 3 Bridge and Building Subdepartment employees J. F. Williams, G. Roper and B. L. Warner (System File W-0052-163/1243633).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper advance written notice of its intention to contract out said work and failed to make a good-faith effort to reduce the incidence of contracting out scope covered work and increase the use of its Maintenance of Way forces as required by Rule 52 and the December 11, 1981 Letter of Understanding.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants J. F. Williams, G. Roper and B. L. Warner shall now each “*** be allowed compensation for the

loss of work opportunity suffered for compensation for all hours worked by the outside contracting force on the referred to dates, this pay must be at their respective Group 3 straight time and overtime rates 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 Carrier notified the General Chairman by letter dated May 15, 2000 of its intention to contract out work at “Tunnels #5 and #6 on the Evanston Subdivision near Evanston, WY.” In that letter, the Carrier described the work to be contracted as “[p]roviding all labor, tools and equipment for moisture testing, rock anchoring, and installation of sump pumps needed to solve moisture problems.” The May 15, 2000 letter met the Carrier’s notice obligations under Rule 52.

In the claim, the Organization describes the disputed work as “break out concrete and auger holes to install sump pumps for a new drainage system and re-pour concrete and related work” - i.e., concrete work. “The ability of the Carrier to contract out concrete work under Rule 52(b) has been upheld in Third Division Awards 31730, 31651, 31287, 31172, 31035, 31029, 31028, 30287 and 30262.” Third Division Award 32333. Those Awards are not palpably in error and will be followed for this type of work.

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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 24th day of February 2005.