

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 37643  
Docket No. MW-36597  
05-3-01-3-81**

**The Third Division consisted of the regular members and in addition Referee Steven M. Bierig 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 to perform routine Maintenance of Way and Structures Department work (remove and replace ceiling tile/pads and associated work) in the Special Agents room in the Headquarters Building at Omaha, Nebraska commencing on October 4, 1999 and continuing through October 8, 1999 instead of B&B Subdepartment employees R. D. Cutsor and E. C. Sorensen (System File W-9952-162/1217200).**
- (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 R. D. Cutsor and E. C. Sorensen shall now each be \*\*\* allowed compensation for an equal proportionate share of all man hours worked by the employees of the outside contracting force commencing on October 4<sup>th</sup> and**

continuing thru October 5, 6, 7 and 8<sup>th</sup> 1999. This compensation must be allowed at their respective straight time and overtime rates of pay as compensation for this violation of the Agreement.”

**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 Claimants hold seniority in the Maintenance of Way and Structures Department, Bridge and Building (B&B) Subdepartment. They were assigned and working their respective positions on the dates relevant to this dispute.

On October 4, 5, 6, 7 and 8, 1999, the Carrier assigned outside forces to replace ceiling tile at the Special Agents' office in Omaha, Nebraska. Three employees of the contractor removed the old ceiling tiles, made repairs to the ceiling structure and installed new ceiling tiles.

On November 30, 1999, the Organization filed its claim alleging that the Claimants should have performed the work of “removing the old ceiling tiles or pads in the Special Agents' room inside the Headquarters Building in Omaha, Nebraska. This work also entailed the inspection and shoring up of the original ceiling structure.” The Organization claimed that the Carrier violated Rules 1, 2, 3, 4, 8, 13, 15, 16, 19, 20, 21, 23, 35 and 52 of the Agreement and the December 11, 1981 Letter of Understanding when the Carrier assigned the ceiling repairs to the outside contractor.

According to the Organization, Maintenance of Way personnel were fully qualified and capable of performing the designated work. The work performed is within the jurisdiction of the Organization and, therefore, the Claimants should have performed said work. Because the Claimants were denied the right to perform the work, the Organization argues that the Claimants should be compensated for the lost work opportunity.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. The Carrier contends that the instant claim was not accurate in that the work was not performed within the Headquarters Building. Further, the Carrier contends that the work was beyond the capabilities of the Carrier's forces. In addition, the Carrier contends that it has the right to contract out such work, based on longstanding arbitral precedent. Finally, even if the claim is valid, the number of hours expended on the project was only 34 total hours, not the 126 that the Organization is claiming.

The claim presented by the Organization asserts that outside forces engaged in the repair and replacement of ceiling tiles in the Special Agents' office in the Headquarters Building in Omaha, Nebraska. The Carrier consistently stated that there is no such office in the Headquarters Building in Omaha. Rather, the Special Agents' office is in a separate building located at 110 North 10th Street in Omaha.

This error is clearly evident. As stated in Third Division Award 31930, "Once the allegations of the claim, including their accuracy . . . were placed in controversy . . . it was incumbent upon the organization to prove each such allegation by submission of probative evidence. . . ." See Also Third Division Awards 30694, 26257, and 12821.

There is no question but that the claim does not accurately reflect the facts of the situation. The Organization has the burden to provide accurate information in order to sustain a claim and in the instant case it did not do so. For this reason, the claim is defective and must be dismissed.

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**AWARD**

**Claim dismissed.**

**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 7th day of December 2005.**