

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39343
Docket No. MW-37420
08-3-NRAB-00003-020477
(02-3-477)

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Union Pacific Railroad Company (former Southern
(Pacific Transportation Company [West Lines])

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Harsco Company) to perform Water Service Sub-department work (operate hy-rail water truck and work related to replenishing water on grinding train and hy-rail truck for the purpose of extinguishing right of way fires) at Lordsburg, New Mexico and Tucumcari, New Mexico on the Tucson Division Eastern Seniority District commencing on March 2 through 14, 2001 and continuing, instead of Water Service Sub-department employe Fernando Edgar (Carrier's File 1275033 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 the work referenced in Part (1) above or make a good-faith effort to reduce the incidence of subcontracting and increase the use of Maintenance of Way forces in accordance with Article IV of the May 17, 1968 National Agreement and the December 11, 1981 Letter of Understanding.
- (3) As a consequence of the violation referred to in Parts (1) and/or (2) above, Claimant Fernando Edgar shall now ‘. . . be paid

additional compensation of the proportional share of the total amount of one hundred and eight straight time (108) hours and twenty-four (24) overtime hours worked by contractor, date beginning March 2, 2001 through March 14, 2001. Claim is submitted as continuous.”

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 Board carefully reviewed the evidence presented on this record. We note that the work claimed is an ineluctable part of the entire process of rail grinding – the contract for which is not disputed by the Organization. Moreover, the original claim maintained that the work at issue was “hooking up a hose to a fire hydrant.” In point of fact, the original claim letter reads, in pertinent part, as follows:

“Work performed consisted of hooking up a hose to a fire hydrant to replenish water on Grinding train and Hyrail truck for the purpose of extinguishing fires along right-of-way and any tie fires.”

We find that the actual work claimed is not only an inseparable part of the grinding work contracted for, it is also, as the Carrier contends, de minimus. The Organization’s belated claim of lack of notice is moot, because in the Organization’s original claim there is no dispute that the Carrier served proper notice of its intent to contract out the rail grinding work. Rather, the Organization maintains that

such notice was not justification for allowing the contractor's employees to perform the specific claimed work.

In light of the foregoing, the instant claim is denied.

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 29th day of September 2008.