

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40323
Docket No. MW-40037
10-3-NRAB-00003-0070238
(07-3-238)**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

**(Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Soo Line Railroad Company (former Chicago,
(Milwaukee, St. Paul and 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 (remodeling and related construction work) at the B&B Shop in LaCrosse, Wisconsin, beginning on October 12, 2004 and continuing (System File C-51-04-C080-18/8-00228-115 CMP).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper advance notice of its intent to contract out said work as required by Rule 1 and failed to enter good-faith discussions to reduce the incidence of subcontracting and increase the use of Maintenance of Way forces as set forth in Appendix I.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants L. Wieting, Jr., E. Arnold, P. Lubeck, M. Norby and A. Anderson shall now each be compensated at their respective and applicable rates of pay for an equal and proportionate share of the total straight time and overtime man-hours expended by the outside forces in the performance of the aforesaid work, beginning October 12, 2004 and continuing.”**

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.

This claim involves the utilization of subcontractors to perform remodeling and construction work at the B&B Shop in Lacrosse, Wisconsin. The Organization contends that B&B forces have historically, traditionally and customarily performed the disputed work and certainly could have done so had they been notified that the Carrier intended to subcontract out the work at issue and met in conference with the Carrier to discuss the matter.

The Carrier asserted that notice and opportunity to conference had been given to the Organization, but the record does not substantiate that assertion. We are compelled to conclude that the Carrier failed to comply with the Note to Rule 1. Even if the Carrier had good and sufficient reason to contract out the work, it was required to notify the Organization and afford its representative an opportunity to discuss the matter in conference before contracting out.

Consistent with the numerous Awards on this subject and on this property, the failure to provide notice to the General Chairman requires a sustaining award. See, Third Division Awards 32861, 36225, 38012, 38965, and 39883. The Carrier's "full employment" defense has been raised and rejected in these cases. We find, therefore, that because the Claimants lost a work opportunity due to the Carrier's failure to comply with the notice and conferencing provisions of the Agreement, they are to be compensated at their straight time rate of pay for the hours indicated in the claim.

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AWARD

Claim sustained in accordance with the Findings.

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 1st day of March 2010.