

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40583
Docket No. MW-39076
10-3-NRAB-00003-050553
(05-3-553)**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**
PARTIES TO DISPUTE: (
**(Union Pacific Railroad Company (former Southern
(Pacific Transportation Company [Western Lines])**

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 (install wing walls for culverts) on the Dunsmuir District, Roseville Service Unit, in the vicinity of Dunsmuir, California beginning on August 23, 2004 and continuing, instead of System Bridge Gang No. 8029 employes R. Dupre, J. Londo, R. Thompson and M. Haugh (Carrier’s File 1409767 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 the provisions of Rule 59 and the December 11, 1981 Letter of Understanding.**
- (3) As a consequence of the violation referred to in Parts (1) and/or (2) above, Claimants R. Dupre, J. Londo, R. Thompson and M.**

Haugh shall now each ' . . . be paid his proportionate share of all hours worked by the outside contractor from August 23, 2004 and continuing until such time as the violation ceases to exist, which shall be no less than the six hundred (600) hours identified herein, at their respective rate 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 instant dispute challenges the action of the Carrier when it used the services of a contractor to install wing walls for a culvert at Mile Post 318.27 on the Valley Subdivision. The Carrier served notice of its intent to contract out certain work on bridges and culverts by letter dated April 2, 2003. The General Chairman requested a conference on the notice which was conducted on April 23, 2003.

The record in this case is virtually identical to the record we analyzed in Third Division Award 40582, which challenged the Carrier's use of a different contractor for culvert installation on the same territory. The work involved was covered by the very same notice dated April 2, 2003 that the Carrier provided for the instant dispute.

We carefully reviewed the record and do not find it to be substantively different from the record that confronted the Board in Award 40582. Except for some different dates on correspondence and some other minor differences in the

work and the mile post location, the instant record presents no significant differences from that seen in the previous dispute.

Given the state of the instant record, for the reasons explained in Award 40582, we are compelled to find that the Organization again failed to sustain its burden to establish scope coverage. Therefore, we must again find that a violation of the Agreement has not been proven.

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 27th day of August 2010.