

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41015
Docket No. MW-39159
11-3-NRAB-00003-050509**

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 Chicago &
(North Western Transportation Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (PCI, Inc.) to perform routine Maintenance of Way work (operate rubber tired end loader to put ballast in track) with System Gang 9048 working on the new connection track to the Crandic Railroad on August 23, 30 and 31, 2004, instead of Roadway Equipment Operator (REO) V. Wheeler (System File UPRM-9597T/1408053).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper advance written notice of its intention to contract out said work and failed to make a good-faith attempt to reach an understanding concerning said contracting as required by Rule 52(a).**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant V. Wheeler shall now ‘*** be compensated for nine (9) hours of work that the contractor employee worked to put ballast in the track, at the applicable REO 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.

After careful review of the two voluminous Submissions provided by the parties, it is clear that the work of ballast distribution was performed in connection with track construction, which was associated with the work being performed by employees of a Consolidated System Gang governed by the main BMWE-UP Agreement. Only the bridge work involved in the overall project fell within the C&NW Agreement. It is further clear that the Carrier provided notice to the General Chairman who administered the BMWE-UP Agreement and they discussed the content of the notice on January 5, 2004, which was more than six months before the contracted work began.

Given the state of the record described above, the Board must conclude that no violation of the applicable Agreement has been established by the available record evidence. Accordingly, the claim must be denied.

AWARD

Claim denied.

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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 20th day of July 2011.