

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31836  
Docket No. MW-31471  
96-3-93-3-471**

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

**PARTIES TO DISPUTE: (**  
**(Brotherhood of Maintenance of Way Employes**  
**(Union Pacific Railroad Company (former**  
**( Missouri Pacific Railroad Company)**

**STATEMENT OF CLAIM:**

**"Claim of the System Committee of the Brotherhood that:**

**(1) The Agreement was violated when the Carrier assigned an outside contractor (M&M Construction Company) to perform Maintenance of Way work (remove and repair crossing) at Mile Post 4.25, Abilene, Texas beginning March 11, 1992 and continuing.**

**(2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it failed to furnish the General Chairman with proper advance written notice of its intention to contract out the work referred to in Part (1) above.**

**(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Foreman R. J. Little, Machine Operators J. L. Stutts, R. G. Maples and J. N. Hollowell shall each be compensated, at their respective rates of pay, for an equal proportionate share of the total number of man-hours expended by the contractor's forces beginning May 11, 1992 and continuing until the project is completed."**

**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.

Although several issues were raised by the parties' on-property assertions, one Carrier defense must be addressed as a threshold matter. In its November 3, 1992 response to the Organization, Carrier said its "... records do not reflect any work was performed by M&M Contracting anywhere around the Abilene, Texas area." (Boldface in original.) With this material fact being placed in dispute by the Carrier, it was incumbent upon the Organization to provide sufficient evidence to show that, in fact, some work was done by contractor forces on the date and at the place alleged in the claim. No such evidence was provided.

It is well settled that the Organization has the burden of proving all material facts necessary to establish a prima facie claim. On this record, the Organization has not satisfied that burden.

### **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 26th day of December 1996.