

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32322  
Docket No. MW-31655  
97-3-93-3-673**

**The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.**

**PARTIES TO DISPUTE: (**  
**(Brotherhood of Maintenance of Way Employees**  
**(Union 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 (Brennan Construction Company) to perform Bridge and Building Subdepartment work (installing guard rail on the one hundred eighty foot (180') by twenty-four foot (24') loading dock inside the breezeway located on the south side between the Steel Car Shop and the Store Department Building at Pocatello, Idaho on July 27, 28, 29 and 30, 1992 (System File R-81/920666).**
- (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 effort to reduce the incidence of contracting out scope covered work and increase the use of their Maintenance of Way forces as required by Rule 52(a) and the December 11, 1981 Letter of Understanding.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, furloughed B&B Carpenter W. S. Wallace shall be allowed forty (40) hours' pay at the B&B First Class Carpenter's straight time rate.”**

**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.

On July 27, 28, 29 and 30, 1992, the Carrier hired an outside contractor to install a guard rail on the loading dock inside the breezeway between the Steel Car Shop and the Store Department Building at Pocatello, Idaho.

The Organization filed the instant claim arguing that the work in question here has customarily, historically and traditionally been assigned to and performed by employees of the B&B Subdepartment. The Organization contends that since the Claimant was on furlough, he was ready, willing, and able to perform the work in question had he been offered the opportunity to do so. Furthermore, the Organization argues that the Carrier violated the Agreement by not giving proper advance notice of its intent to hire an outside contractor.

The Carrier denied the claim contending that it did give notice to the Organization by letter dated March 25, 1992, referencing "the construction of a new shipping and receiving area for Building 34A at Pocatello, Idaho, which included construction of a dock, furnishing and installation of an overhead door, furnishing and installation of a 12-foot by 24-foot dock cover, and all related work thereto". Furthermore, the Carrier argues that the Claimant was fully employed on other projects for the Carrier at the time the work was being performed by the outside contractor.

The parties being unable to resolve the issues at hand, this matter came before this Board.

This Board has reviewed the record in this case and we find that the Organization has not met its burden of proof that the Agreement was violated when the Carrier retained a subcontractor to install the guard rail at issue. The Carrier has included as part of its submission the letter to the General Chairman from the Assistant Director of Labor Relations advising the Organization of the Carrier's intent to solicit bids covering the construction of the new shipping and receiving area "...which includes construction

of a dock, furnishing and installation of an overhead door, furnishing and installation of a 12-foot by 24-foot dock cover, and all related work thereto". (Emphasis added.) This Board finds that that letter constituted appropriate notice as is required under Rule 52. We find that it was not necessary for the Carrier to specifically state that the dock area that was being constructed would also require a guard rail and that a specific notice be sent for that.

With respect to the substance of the case, this Board finds that the Carrier has demonstrated a past practice of subcontracting this type of work. The Carrier also included with its submission a listing of hundreds of similar jobs which have been subcontracted to outside companies over the past few years.

Finally, the Carrier has also shown that the Claimant was fully employed during the claim period.

Since the Organization has not met its burden of proof in this case, the claim must be 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 13th day of November 1997.