

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32323
Docket No. MW-31656
97-3-93-3-675**

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 Employes
(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 (installation of steel siding on the breezeway located on the south side between the Steel Car Shop and the Store Department Building) in Pocatello, Idaho on August 5, 1992 (System File R-82/920667).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with 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 and employed B&B Carpenter T. D. Stalder shall each be allowed ten (10) 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 August 5, 1992, the Carrier hired an outside contractor to install steel siding on the breezeway on the south side 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 Claimants were willing and able to perform the work in question had they 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 retain an outside contractor to perform the work.

The Carrier denied the claim contending that it did give notice to the Organization by letter dated July 3, 1992. However, the Carrier points out the work that it advised the Organization the Carrier was going to contract out was for installation of insulation in the roof panels and walls of the breezeway between the Car Shop and Warehouse in Pocatello, Idaho, and not steel siding as the Organization refers to in its claim. Furthermore, the Carrier argues that the Claimants were fully employed on other projects for the Carrier at the time the work was being performed by the contractor.

The Board reviewed the record and finds that the Organization has not met its burden of proof that the Carrier violated the agreement when it assigned outside forces to install steel siding on a breezeway. The Board finds that the Carrier complied with the notice requirements of Rule 52 when on July 3, 1992, the Assistant Director of Labor Relations advised the General Chairman of the Carrier's intent to solicit bids "to cover installation of insulation in the roof panels and walls of the breezeway between the car shop and warehouse in Pocatello, Idaho." Therefore, we find the Organization's claim with respect to the Carrier's failure to give notice has no merit.

With respect to the substantive issues, the Board finds that the Carrier demonstrated with sufficient evidence that it has a past practice of contracting out work that is similar to the work at issue here. The Carrier included within the on property correspondence a list of hundreds of similar jobs in the same area which have been contracted out by the Carrier in the past.

Since the Organization bears the burden of proof in cases of this kind, the Board has no choice but to deny this claim.

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.