

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32324
Docket No. MW-31657
97-3-93-3-676**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(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 (removing old windows, framing in and installing steel siding on the west side of the old Bearing Room Building (Building 30) in the Pocatello Idaho Yard at Pocatello, Idaho July 23, 27, 28, 29 and August 11, 12, 13 and 17, 1992 (System File R-83/920668).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a 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 and employed B&B Carpenter T. D. Stalder shall each be allowed ninety-five (95) 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 23, 27, 28, 29 and August 11, 12, 13 and 17, 1992, the Carrier hired an outside contractor to remove old windows and install steel siding on the west side of the old Bearing Room Building in Pocatello Idaho Yard at Pocatello, Idaho.

The Organization filed the instant claim arguing that building construction and repair work of this nature 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 hire an outside contractor.

The Carrier denied the claim contending that it did give notice to the Organization by letter dated July 6, 1992. The Carrier pointed out that the Organization initiated this claim on September 2, 1992. 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 Agreement was violated when the Carrier retained an outside contractor to remove the old windows and framing, and install steel siding. Therefore, the claim must be denied.

The record shows that the Carrier issued a notice on July 6, 1992 of its intent to contract out the work involved here. The Carrier's Submission contains a letter from the

Assistant Director of Labor Relations addressed to the General Chairman in which he advises the Organization of the Carrier's intent to solicit bids to cover the work of "reframing of existing windows with siding to match existing building in the area." This Board finds that that notice was sufficient to meet the requirements of Rule 52.

With respect to the balance of the claim, the Board finds that the Carrier demonstrated a past practice of contracting out work that is similar to the work at issue here. The Carrier's Submission contains hundreds of examples of similar work that had been previously performed by outside contractors for the Carrier in the years preceding this incident.

Finally, the Carrier demonstrated that the Claimants were fully employed during the entire period of time that this contracting took place.

For all of the above reasons, this 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.