

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32333
Docket No. MW-32021
97-3-94-3-341**

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

**(Brotherhood of Maintenance of Way Employes
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 or otherwise permitted employees of an outside contractor (Neosho Construction Company, Inc.) to perform Maintenance of Way and Structures Department work (excavating, preparatory work, pile driving, forming, pouring and finishing of concrete and other related work) in connection with the extension of the width of the main line bridge at Mile Posts 40.50 to 40.75 near Ontario, California beginning December 7, 1992 and continuing (System File H-46/930435).**
- (2) The Agreement was further violated when the Carrier failed to provide proper and timely advance written notice of its intention to contract out the specific work involved herein or to hold good-faith discussions prior to the contracting transaction.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above:**

‘* As compensation for loss of work opportunity Claimants Baker, Holland and Wolfe should each be paid nine and three-eighths (9 3/8) hours of pay for each day worked by the contractor beginning on December 7, 1992 at the first class carpenter's rate of pay for pile driving, excavating,**

preparatory work, concrete forming, concrete pouring, concrete finishing and other related work for the width extension of the bridge at M.P. 40.50 to 40.75 near Ontario, California. Claimants Chamberlain and Blankinship should each be paid nine and three-eighths ($9 \frac{3}{8}$) hours of pay for each day worked by the contractor beginning on December 7, 1992 at the B&B foreman's rate ***'

and continuing until the violation ceases."

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.

This dispute arises out of the Carrier's use of outside forces to perform concrete and related work in connection with the extension of the width of the main line bridge near Ontario, California. The record reveals that the Carrier gave notice of its intention "to solicit bids to cover the construction of a second main line, MP 39 to MP 55 located between Ontario and Pedley, California..... which includesbridges..." on May 28, 1992, stating that it "will be available to conference this Notice within the next fifteen (15) days...." By 30 page letter dated June 1, 1992, the Organization objected to the contracting, raised specific questions, and requested a conference prior to the commencement of the work. The Carrier responded to the Organization's concerns and expressed a willingness to meet in its June 5, 1992 reply, suggesting that the Organization put the matter on the agenda at their next conference on contracting notices. The matter was discussed in conference on June 8, 1992. The contracting in issue commenced in December, 1992.

The Board initially concludes that the record in this case does not support the Organization's contention that the Carrier failed to give adequate notice of the work to be contracted under the requirements of Rule 52. The breadth of the notice clearly covers bridge work to be performed at MP 40 near Ontario, California in connection with the main line expansion. See Third Division Award 31028. The Organization failed to show that the work actually contracted was outside the scope of this notice. We conclude that the notice gave the Organization enough information to take a position on whether the work in issue should be contracted out. Further, a conference was actually held between the parties where this notice was discussed. Under such circumstances, the Board has held that the Carrier complied with the notice provisions of Rule 52. Third Division Awards 30185, 30063, 29981.

The ability of the Carrier to contract out concrete work under Rule 52(b) has been upheld in Third Division Awards 31730, 31651, 31287, 31172, 31035, 31029, 31028, 30287 and 30262. Given the practice established on this property for the kind of contracting out involved in this case, there is no basis for determining that these Awards are palpably erroneous. In the interests of stability, we shall follow their holdings.

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.