

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32352
Docket No. MW-31919
97-3-94-3-214**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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 outside forces (Gilliam Contractors) to perform Maintenance of Way work (removing crossties from the track and transporting same to crossings for pickup at a later date) within the limits of the EDTG on the Hoxie Sub beginning February 1, 1993 and continuing (Carrier's File 930394 MRP).**
- (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 said work and failed to act in good faith as set forth in the December 11, 1981 Letter of Understanding.**
- (3) As a consequence of the violations referred to in Partes (1) and/or (2) above, Machine Operator S. L. Richardson shall be compensated at the machine operator's straight time and/or overtime rate of pay for an equal proportionate share of the total number of man-hours expended by the outside forces in the performance of the above-described work.”**

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.

The Organization argues that the Claimant was a qualified machine operator capable of operating a Tie Handler Crane. Instead of providing the Claimant the opportunity to utilize the equipment to remove cross ties from track, the Carrier hired a private contractor. The Organization argues that such work belongs to the employees by Agreement. It points out that the Claimant was qualified and worked the very Gang where the violation occurred. The Organization argues that on a daily basis the Carrier utilized other Maintenance of Way employees on Tie Handler Cranes (THC) to pick up used ties and move them to stacking areas, while it used a contractor's employee instead of the Claimant on another THC. It argues that the Carrier failed to give proper notice; removed work belonging to the employees; and denied the Claimant work opportunity for which he was entitled.

The Board fails to find an Agreement violation. The Carrier argued that there was a mixed practice on this property and this argument has Award support (Third Division Award 29714). Additionally, we find that the Organization has failed to provide proof that the Carrier lacks a practice of contracting out such track work. The Claimant's qualifications to operate the Tie Handler Crane were challenged by the Carrier as the contractor's THC was "far more sophisticated (technology wise) than the THC's owned by the Carrier." We find nothing in the record or the Claimant's December 20, 1993 letter that indicates he had the ability to operate the THC utilized by the contractor, or any evidence that it was equivalent to those owned by the Carrier. The Organization has failed to prove that the work contracted out by the Carrier was that belonging exclusively to the employees. Part (1) of the claim must be denied.

The Board finds that the Carrier has failed to give timely notice of intent as required by the Agreement. The work began on February 1, 1993. The Board finds that the Notice of Intent was served on February 5, 1993. As such, Part (2) of the claim must be sustained. However, we deny Part (3) of the claim for compensation as the Claimant was fully employed and we can find no evidence in this record of any wage loss suffered (Third Division Awards 31835, 31273).

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 13th day of November 1997.