

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33470
Docket No. MW-32534
99-3-95-3-388**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen 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 outside forces (Unistrut of Portland) to perform Bridge and Building Subdepartment work ‘*** installed a metal frame on top of the existing floor, then put in two foot (2') by two foot (21) floor panels on the metal frame. Some of the floor panels were cut to size with a jigsaw. ***, in the Hinkle Crest Building Communications Room, Hinkle, Oregon on March 28 and 29, 1994 (System File C-34/940403).**
- (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 its 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, B&B Carpenters D. H. Hector and W. D. Huffman shall each be allowed eighteen (18) 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.

By letter of February 16, 1994, Carrier's Director Labor Relations: Maintenance of Way/Signal notified the General Chairman of the BMW as follows:

This is to advise of the Carriers intent to solicit bids to cover the installation of a raised floor and the installation of an ADA ramp in the Communication Center Crest Building at Hinkle, Oregon.

This work is being performed under that provision of the Agreement which states, "Nothing in this rule shall affect prior and existing rights and practice of either party in connection with contracting out." As information, all employees on Roster 7003 are fully employed and therefore the Carrier does not have the skilled manpower available to timely perform the work described above.

Serving of this "Notice" is not to be construed as an indication that the work described above necessarily falls within the "scope" of your Agreement, nor as an indication that such work is necessarily reserved, as a matter or practice, to those employees represented by the Brotherhood of Maintenance of Way Employees.

Additionally, I will be available to conference this Notice within the next fifteen (15) days in accordance with Rule 52 of the Collective Bargaining Agreement.

Following a conference on February 22, 1994, the General Chairman notified Carrier by letter of February 28, 1994 that he considered the foregoing notice "procedurally defective," declined to agree to the contracting out and asserted a Scope Rule claim to the work in question. Notwithstanding the Organization's protests, Carrier contracted with Unistrut of Portland for construction of a raised floor in the Communication Center Crest Building at Hinkle, Oregon. The contractor commenced the work on March 28, 1994 and completed the floor on March 29, 1994. By letter of April 19, 1994 the General Chairman initiated the present claim which was denied at all levels of handling on the property until appeal to this Board for final and binding resolution.

The February 16, 1994 letter of notice and associated pre-contracting conference were not "procedurally defective" or substantively inadequate under Rule 52 (a) or the December 11, 1981 Letter of Agreement. See Third Division Awards 30185, 30063 and 29981. Similarly, the Organization has not carried its burden of persuasion on this evidentiary record with regard to reservation of the disputed work to Agreement-covered employees by express language in Rule 1-Scope and/or by custom, practice and tradition of system-wide performance to the practical exclusion of others.

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 22nd day of September 1999.