

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 36162  
Docket No. MW-35804  
02-3-99-3-779

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees  
(Union Pacific Railroad Company (former Southern  
( Pacific Western Lines)

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Erickson Company) to perform Water Service Sub-department work (maintain and operate lift and transfer pumps) in connection with a diesel fuel spill and water run-off control at Mile Post 192 in the vicinity of Norden, California on the Sacramento Division beginning May 16, 1997 and continuing (Carrier's File 1088688 SPW).
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with a proper advance written notice of its intent to contract out the work in Part (1) above in accordance with Article IV of the May 17, 1968 National Agreement.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants D. R. Shelley, R. D. Holmgren, D. R. Beaver, T. J. Farinha, J. E. Thomas, T. J. Miller, J. R. Bovard, D. D. DeGroot, R. D. Robinson, J. R. Rhea, K. A. Yoder, J. C. Karl, B. J. Dills and E. O. Hammond shall each be 'paid his proportionate share, at the respective rate of his assigned position, for the total number of man hours worked by the outside contractor and his employees. Payment shall be in addition to any compensation they may have already received. We further request that each named Claimant be paid at the applicable time and one-half rate of his respective position for any and all overtime worked by the outside contractor and his employees, which can no doubt be determined by a joint review of the service contract between Erickson Environmental Company, Inc. and the Southern Pacific Transportation Company. \*\*\*\*”

**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.

A diesel spill occurred on the Carrier's property at Norden, California, Mile Post 192 of the Sacramento Subdivision on February 26, 1997. Approximately 17,000 gallons of diesel fuel were spilled on the ground. Given this emergency situation, the Carrier employed an outside contractor (Erickson Environmental) to contain, control and clean up the diesel fuel spill. Beginning February 28, 1997 the Carrier assigned Maintenance of Way forces to join the contractor in the work. This continued through May 15, 1997.

The Organization raised no claim as to the above sequence of events.

On May 16, 1997, however, the Carrier's forces were reassigned from this duty and returned to other assignments. The contractor's forces continued work at the site through August 31, 1997. The claim here under review concerns this period. The Organization notes the failure of the Carrier to provide advance notice of that portion of the contracting that commenced on May 16, 1997, and contends that the remaining work could and should have been assigned to Carrier forces.

It may be reasonably inferred that the Carrier could have given a 15-day advance notice of its intention to discontinue use of Carrier forces on May 15, 1997. This, however, would hardly have been a notice of planned (that is, future) contracting of work, because the contractor was already in place. The record fails to show whether the nature of the work performed by contractor forces beginning May 16, 1997 differed in any way from that which they performed for the two and one-half months preceding that date. Because there was no claim as to the earlier period, the Organization's argument as to improper assignment of scope-covered work is not persuasive.

Sustaining Third Division Award 31997, cited by the Organization, gives additional credence to this point. The circumstances in Award 31997 were that a Maintenance of Way Gang was assigned to commence work on structural repairs to two bridges. The Gang was then removed from this assignment; the Carrier gave notice of its intention to contract out this work; and the Carrier then assigned a contractor to the

work prior to the requisite 15-day period. As a result, the Organization had established that the Gang was capable of the work (because the Gang had been assigned to it) and that the Carrier had not met the 15-day advance notice requirement. Here, the contractor was assigned under emergency circumstances (in the face of an unanticipated diesel fuel spill) and the use of Carrier forces was supplementary.

**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 20th day of August 2002.