

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36832
Docket No. MW-36013
04-3-00-3-95**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(Union Pacific Railroad Company [former Southern
(Pacific Transportation Company (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 (Jim Dobbas Construction Company) to perform routine Track Sub-department work (hauling track material) within the Roseville Yard at Roseville, California commencing on September 14, 1998 and continuing (Carrier’s File 1170553 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 violation referred to in Parts (1) and/or (2) above, Claimants R. L. Luckett, J. L. Valliere, D. M. Fullmer and R. Palomar shall now each be paid at their applicable truck driver (semi-trailer) operator rates of pay for an equal and proportionate share of all hours expended by the outside forcers in the performance of said work commencing on September 14, 1998 and continuing.”**

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 notice dated July 9, 1997, the Carrier advised the Organization of its intent to contract out the reconstructing of Roseville Yard and requested the Organization to advise if a conference was desired. The Organization did not request a conference. The claim was filed protesting the performance of the work by outside forces.

The Organization's failure to request a conference bars the Organization from contesting the propriety of the Carrier's contracting out the disputed work. Third Division Award 31016 ("... where the Organization has failed to take advantage of its Agreement right to have a meeting and engage in good faith discussions following the Carrier's indicated willingness to hold a conference, this Board has held that the Organization is precluded from challenging the resulting contracting"). See also, Third Division Awards 28337 and 24888.

The claim must therefore be denied.

AWARD

Claim denied.

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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 28th day of January 2004.