

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 39273  
Docket No. MW-37751  
08-3-NRAB-00003-030116  
(03-3-116)

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 Employees  
(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 (Dan R. Dalton, Inc.) to perform Maintenance of Way and Structures Department work (bridge straightening) at Bridge 17.76 on the Kenton Line at Portland, Oregon on 185th Street on January 3, 4 and 5, 2002, instead of furloughed Northwestern District Steel Erection employees R. A. Smith, M. J. Dunn and J. L. Geiss (System File J-0252-55/1308040).
- (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 and the December 11, 1981 Letter of Understanding.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants R. A. Smith, M. J. Dunn and J. L. Geiss shall now each ‘. . . be allowed at his applicable rate a proportionate share of the total hours, both straight and overtime hours worked by the contractor doing the work

claimed as compensation for loss of work opportunity suffered on when the Carrier failed to assign Claimants the work of straightening Bridge 17.76 on the Kenton Line at Portland, Oregon located on 185th Street, on January 3, 4 and 5, 2002.’”

**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 August 6, 2001, the Carrier advised the Organization:

“This is a 15-day notice of our intent to contract the following work:

Location: various locations on Union Pacific Railroad’s Western Region

Specific Work: furnish all labor, supervision, equipment, materials and supplies to heat and flame straighten structural steel beams.”

\* \* \*

The work was performed by the contractor on the dates set forth in the claim. This claim followed.

First, we reject the Carrier's argument that the Organization must demonstrate that covered employees performed the disputed work on an exclusive basis. "... [E]xclusivity is not a necessary element to be demonstrated by the Organization in contracting claims." See Third Division Award 32862 and Awards cited therein. See also, Third Division Award 30944:

"... [T]he Carrier's argument that the Organization has not shown that the covered employees performed the work on an 'exclusive' basis does not dispose of the matter. On its face, Article 36 does not specifically provide that the disputed work must be exclusively performed by the employees. Rather, Article 36 addresses 'work within the scope of the applicable schedule agreement.' Based upon the statements of the employees that they have performed this type work in the past, we are satisfied that the work at issue was 'within the scope' of the Agreement. Third Division Award 29158...."

Rule 52(a) governs the contracting of work and provides that "... work customarily performed by employees covered under this Agreement may be let to contractors and be performed by contractors' forces. ..." The type of work in dispute - bridge repair - is classic maintenance of way work "... customarily performed by employees covered under this Agreement. ..." See Rule 8 ("The work of construction, maintenance and repair of ... bridges ... shall be performed by employees in the Bridge and Building Subdepartment."). A showing of exclusive performance of the work is not required.

Second, we find the Carrier met its notice obligations under Rule 52(a) ("In the event the Company plans to contract out work because of one of the criteria described herein, it shall notify the General Chairman of the Organization in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than fifteen (15) days prior thereto, except in 'emergency time requirements' cases."). Notice issued August 6, 2001 and a conference between the parties was held more than 15 days prior to commencement of the disputed work by the contractor.

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Third, the Carrier contracted bridge repair work in the past. For similar reasons discussed in Third Division Awards 28654, 29782, 31170 and 31287, this claim must be denied.

**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 21st day of July 2008.**