

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 39345
Docket No. MW-37494
08-3-NRAB-00003-020576
(02-3-576)

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(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 (Charles Jones) to perform routine Track Sub-department work (install rubber pads) for a crossing at Troy on the Truckee District in the vicinity of Mile Post 184.90 on June 5, 2001 (Carrier's File 1281030 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 P. H. Martinez, J. H. Martinez, R. V. Garcia, J. E. Madrigal, D. G. Simpson, R. C. Canchola, J. L. Gomez, S. B. Bridi, S. Waters and M. S. Seed shall now each be compensated for eight (8) hours' pay at their respective straight time rates of pay.”

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 Board read the record carefully. We find the following: 1) there is no evidence on this record that there is actually a crossing at the mile post listed (the Carrier stated there is not, and the Organization failed to refute that statement); 2) there is no evidence whatsoever that Carrier hired the individual in question, or even knew the work alleged was being done; and 3) the question of whether such alleged work might have fallen within the purview of the parties' Agreement is thus moot. Accordingly the instant 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 29th day of September 2008.