

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39533
Docket No. MW-37495
09-3-NRAB-00003-020577
(02-3-577)

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 (Kinley Construction) to perform Bridge and Building Sub-department work (build fuel spill containment wall around an adjacent fuel tank) at the Round House Fueling Facilities in the vicinity of Tucson, Arizona commencing on May 1 and continuing through June 15, 2001 (Carrier’s File 1281029 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 T. Gil, J. Savage, E. Springstead, R. Escalante and D. Perez shall now each ‘. . . be paid two hundred and forty-eight (248) hours at their respective rates of pay, plus any and all overtime hours associated with the contracted work. Said compensation will be in addition to any

other compensation received in the performance of their other assigned duties.’”

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 basic facts precipitating this claim are not in dispute. On November 15, 2000 the Carrier notified the Organization of its intent to contract out the above-referenced construction project. The parties conferenced the notice on December 4, 2000, but were unable to reach agreement. Between May and mid-June 2001, an outside contractor (Kinley Construction) constructed a 100 foot concrete trough and containment wall adjacent to a fuel tank on the Carrier's property. The Organization filed the above claim on June 26, 2001. In its claim, the Organization maintained that such work was normally reserved to BMW-employees and should not, therefore, have been contracted out to and performed by non-agreement employees. The claim was denied on August 20, 2001, and it was subsequently appealed in the usual manner, after which it remained in dispute. It is properly before the Board for resolution.

We reviewed the rather voluminous record in this case. We find that the notice to the Organization was timely and sufficiently specific. We also note that the Carrier has given ample evidence to demonstrate that with regard to this particular work, the Carrier has an historical mixed practice of using outside contractors to perform the work. Moreover, there is no dispute that the employees cited in the

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claim were fully employed during the period the work at issue was contracted out. Accordingly, we find no basis upon which to sustain the claim.

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 2nd day of February 2009.