

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 39611  
Docket No. MW-36188  
09-3-NRAB-00003-000381  
(00-3-381)

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman 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 (Blodgett Engineering and Fabrication) to perform routine Maintenance of Way and Structures Department work (turntable repair) at Hinkle, Oregon on February 22, 23, 24, 25 and 26, 1999 instead of Northwestern District Steel Erection employees H. S. Roe, D. R. Scoville and S. E. Burgus (System File J-9952-71/1187975).**
- (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 H. S. Roe, D. R. Scoville and S. E. Burgus shall now each be compensated for an equal proportionate share of the total number of man-hours, straight time and overtime**

hours, expended by the outside forces in the performance of the work in question at their respective applicable 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.

This claim arises out of the Carrier's February 22, 23, 24, 25 and 26, 1999 assignment of Maintenance of Way and Structures Department work to Blodgett Engineering and Fabrication, an outside firm, and the Organization's objection to said assignment.

Based on the record before the Board, this is not a case of first impression.

In a nearly identical case between the same parties (Third Division Award 36625) the Organization contended, inter alia, “[t]he Agreement was violated when the Carrier assigned outside forces (Rex Fabrication) to perform routine Maintenance of Way and Structures Department work (turntable repair) at Hinkle, Oregon, on March 30, 31 and April 7, 1999 instead of Northwestern District Steel Erection employees D. E. Larsen and S. E. Burgus. . . .” The claim further asserted that the Carrier had “. . . 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 . . . as required by Rule 52 of the December 11, 1981 Letter of Understanding.” It also asserted a violation of Rules 1, 2, 3, 4, and 8, among others.

In the above referenced case, the Board specifically found that “. . . the work in dispute did not involve ‘repairs’ to an existing turntable, but rather the installation of a turntable. In that connection, the Organization did not dispute the Carrier’s assertion: “Claimants have never performed the work of installing turntables, nor do they possess the requisite knowledge to accomplish same. . . .”

In the instant case, based on the record before the Board, it is clear that the work subcontracted was for turntable installation, not repair. As noted in Award 36625, there is no evidence in the record to suggest that the Claimants ever performed turntable installation work.

As to the claim of lack of notice, there is simply insufficient evidence in the record to conclude that the Carrier either needed or failed to give due notice of its intention to contract out the instant work.

**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 1st day of April 2009.**