

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39942
Docket No. MW-40723
09-3-NRAB-00003-080585**

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

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference**
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Chicago and
(North Western Transportation Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Andersen Trenching & Excavation) to perform Maintenance of Way and Structures Department work (demolish/dismantle Section Crew Building) at Mile Post 2.3 on the Clinton Subdivision on April 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13, 2007 (System File S-0701C-359/1478623 CNW).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper written notice of its intent to contract out the above-referenced work or make a good-faith attempt to reach an understanding concerning such contracting as required by Rule 1(b).**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants E. Ray, W. Dewald and C. Jones shall now each be compensated for eighty (80) hours at their respective time and one-half 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.

On the dates set forth in the claim, the Carrier utilized the services of an outside contractor to demolish a building. Under Rule 1(b) such work is typical Maintenance of Way work:

“Employees included within the scope of this Agreement in the Maintenance of Way and Structures Department shall perform all work in connection with the . . . dismantling of . . . structures and other facilities used in the operation of the Company. . . .”

Issues of notice and conference requirements aside, in its July 19, 2007 letter, the Carrier asserted that the contractor was utilized “. . . because the work involved the removal of asbestos covered metal throughout the building which requires skills not possessed by the BMWED.” Aside from the assertion of a need to use a contractor because of special skills not possessed by the employees, the stated reason for using the contractor because of asbestos removal has not been substantiated by the Carrier in this record. On that basis, the claim has merit. The Claimants shall therefore be made whole at the applicable contract rate for the lost work opportunities.

AWARD

Claim sustained in accordance with the Findings.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 30th day of September 2009.