

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40246
Docket No. MW-39484
10-3-NRAB-00003-060281
(06-3-281)**

The Third Division consisted of the regular members and in addition Referee Brian Clauss when award was rendered.

PARTIES TO DISPUTE (Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
(
(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 (J. Dobbas, Inc.) to perform Maintenance of Way and Structures Department work (install gauge rods) at Mile Post 243.50 at Cresta on the Canyon Subdivision on April 9, 2005 (Carrier’s File 1422549 SPW).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper advance written notice of its intention to contract out said work or make a good-faith attempt to reach an understanding concerning said contracting as required by Rule 52(a).**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants T. Oxford, T. Morrissey, D. Whiting, J. Nolan, W. Steep, B. Robert, R. Christensen, K. Roth, D. Ricks, D. Glover, J. Allen, M. Miller, Jr., S. Soriano, E. Soriano and S. Roth shall now each be compensated at their respective time and one-half rates of pay for an equal and proportionate share of the total man-hours expended by the**

outside forces in the performance of the aforesaid work on April 9, 2005.”

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.

A review of the record evidence reveals that a derailment occurred at MP 243.50 on April 8, 2005. Carrier forces, as well as nine employees of Jim Dobbas, Inc. were used to restore service to the main line, including installation of gauge rods during early morning hours. The Organization filed a claim for the contracting of the gauge rod installation.

The Organization maintains that the Carrier violated the Agreement when it did not provide the required notice of the Carrier’s intent to contract out the gauge rod installation and instead called the contractor to perform the work. According to the Organization, the Carrier’s “emergency” defense fails because the record does not contain any evidence that the derailment interrupted the Carrier’s operations. Further, the installation of the gauge rods was not necessary to opening the main line.

The Carrier counters that the claim is defective because the Organization changed the initial claim from a violation of Rule 52 to a violation of Rule 59 and then back to a violation of Rule 52. The Carrier continues that, even if the merits

are considered, the claim must fail because there was an “emergency” situation requiring a response.

The Board carefully reviewed the record evidence. The Organization cites the definition of “emergency” from Third Division Award 24440 as the “sudden, unforeseeable, and uncontrollable nature of the event that interrupts operations and brings them to an immediate halt.” The Carrier cites to the definition in Third Division Award 20527 as “an unforeseen combination of circumstances which calls for immediate action.”

Regardless of whether the Organization’s or the Carrier’s definition of “emergency” is applied, there was an emergency in this matter because a derailment closed the main line. Given the emergency situation cause by the derailment, the Carrier was not required to provide 15 days’ advance notice of its intent to contract the claimed work. Accordingly, the claim is 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 15th day of January 2010.