

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40410
Docket No. MW-39481
10-3-NRAB-00003-060231
(06-3-231)**

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

**(Brotherhood of Maintenance of Way Division –
(IBT Rail Conference
PARTIES TO DISPUTE: (
(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 (Paul Reed Construction) to perform Maintenance of Way and Structures Department work (construct containment bin and pad, remove and dispose of existing pads, remove and replace containment walls) at the Fueling Facility in South Morrill, Nebraska beginning on February 7, 2005 and continuing, instead of Nebraska Division B&B employees J. W. Cannon, D. V. Wood and C. A. Beseke (System File UPRM-9640T/1422612).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper advance written notice of its intent 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 J. W. Cannon, D. V. Wood and C.A. Beseke shall now be compensated at their respective rates of pay for an equal proportionate share of the total man-hours expended by**

the outside forces in the performance of the aforesaid work beginning February 7, 2005 and continuing.”

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 Carrier notified the General Chairman in a letter dated September 24, 2004 of its intent to contract out work at “. . . 90624 County Road F, South Morrill, Nebraska.” The letter described the specific work as: “. . . perform wastewater treatment plant upgrades, install truck loading pads for containment of service track, and install drip pans at tank car unloading facility.”

The Organization maintains that this notice of intent to subcontract was insufficient under the requirements of Rule 52(b). A subsequent notice in February 2005 attempted to cure the problem with the September 24, 2004 notice, but it was after the work had begun and, therefore, was irrelevant. According to the Organization, the notice addressed the wastewater treatment upgrades, whereas the work at issue involved containment work. BMWF-represented forces built the original structures and the work was, accordingly, reserved to them.

The Carrier contends that (1) the notice was sufficient (2) the Organization conferenced the matter and (3) the concrete work at issue has a long-recognized history of being performed by contractors. Further, the February 2005 notice is

inapplicable to the instant claim because it was for a system-wide petroleum systems project. It was served on a different General Chairman, and was withdrawn at conference.

The Board carefully reviewed the on-property record, as well as the Submissions of the parties and finds that the September 24, 2004 notice met the Carrier's notice obligations under Rule 52. The Board also finds that the February 2005 notice cited by the Organization is inapplicable to the instant claim.

The Organization described the work at issue as "construct containment bin and pad, remove and dispose of existing pads, remove and replace containment walls." This work is concrete work. In Third Division Award 37353 the Board held that "[t]he ability of the Carrier to contract out concrete work under Rule 52(b) has been upheld in Third Division Award 31730, 31651, 31287, 31172, 31035, 31029, 31028, 30287 and 30262." (Citing Third Division Award 32333.)

Those Awards are not palpably in error and will be followed for this type of work. Accordingly, the instant 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 14th day of May 2010.