

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40809
Docket No. MW-40730
10-3-NRAB-00003-080616**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

**(Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(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 to perform Maintenance of Way and Structures Department work (flagging and protection for Gang 9012 working at crossings) between Mile Posts 367.0 and 368.7 of the Los Angeles Subdivision on April 18, 2007 and continuing through April 26, 2007 (Carrier’s File 1479962 SPW).**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with a proper notice of its intent to contract out the work referenced in Part (1) above, or make a good-faith effort to reduce the incidence of subcontracting and increase the use of Maintenance of Way forces in accordance with the provisions of Rule 59, Article IV of the May 17, 1968 National Agreement and the December 11, 1981 Letter of Understanding.**
- (3) As a consequence of the violation referred to in Parts (1) and/or (2) above, Claimants A. Chavez, P. Arechiga, R. Aguilera, J. Tovar, Jr., H. Valdez, E. Carrasco and V. Espinoza, Jr. shall now each be compensated for fifty-six (56) hours at their respective**

straight time rates of pay and for fifty-nine (59) 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.

The basic facts of the claim are not in dispute. System Steel Gang 9012 worked on a project on the Carrier's main line near Santa Barbara, California, during the claim dates. The Carrier used the services of an outside contractor to perform flagging and crossing protection for Gang 9012. The Organization made claim for the flagging work pursuant to the Southern Pacific Western Lines-BMWE Agreement (SPW-BMWE) dated October 1, 1973, and last revised December 31, 2003.

The Carrier pointed out that the project work of Consolidated System Gangs is wholly governed by the Union Pacific - BMWE Agreement (UP-BMWE) dated July 1, 2001. As a result, all portions of a System Gang project are controlled by the UP-BMWE Agreement. The consistent practice under the UP-BMWE Agreement is to use contractor forces to provide flagging and crossing protection for the gang while it completes the project.

According to the Organization's position, it recognized that System Steel Gang 9012 properly performed the project work that it did. The Organization's claim, however, is only for the flagging and protection work that was performed by the contractor on what is former SPW territory.

The foregoing claim is not one of first impression. The analytical principles that apply to this kind of jurisdictional dispute were cogently described in Award 8 of Public Law Board No. 7097. The findings of that Board were recently fully followed in Third Division Awards 40291 and 40292. Accordingly, we need not elaborate at length in this decision to restate what is contained in those Awards.

Prior precedent has established that all portions of projects undertaken by the Carrier's Consolidated System Gangs are governed by the UP-BMWE Agreement until those parties agree otherwise. Therefore, issues involving the use of contractor forces to perform portions of an overall Consolidated System Gang project are to be resolved pursuant to the rights and responsibilities that apply under the UP-BMWE Agreement. Accordingly, the Carrier was not required under the SPW-BMWE Agreement to serve notice of its intent to contract out the work in dispute. Moreover, it follows that no violation of the SPW-BMWE Agreement has been established. Accordingly, the instant claim must be 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 December 2010.