

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 40960  
Docket No. MW-41303  
11-3-NRAB-00003-100150**

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**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier assigned outside forces (Dondlinger and Sons Construction) to perform Maintenance of Way work (replace pillar blocks and related work) on the piers at BR 225.15 on the Sharon Springs Subdivision beginning on November 20, 2008 and continuing through December 30, 2008 (System File D-0852U-232/1514623).**
- (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 attempt to reach an understanding concerning said contracting 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 D. Bejan, M. Goin, K. Manley, M. Schooler and R. Sparks shall now each be compensated at their respective Group 3 rates of pay for a proportionate share of all man-hours expended by the outside forces in the performance of the aforesaid work beginning on November 20, 2008 and continuing through December 30, 2008.”**

**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.

By letter dated September 29, 2008, the Carrier advised the Organization as follows:

“This is a 15-day notice of our intent to contract the following work:

Location: Bridge 277.63 Sharon Springs Subdivision - near Hays, Kansas and Bridge 225.15 near Ellsworth, Kansas

Specific Work: This request is to cover the repairs for two bridges on the Sharon Springs Subdivision Bridges 277.63 and 225.15. Furnish all labor, supplies, materials, equipment and supervision to replace bridge pier tops, install new anchor bolts, level spans, place dowels and reinforcement bars to face abutments and wing walls with a minimum of 8” of concrete. (Full scope to be discussed at showing)”

Conference was held under Rule 52 on October 9, 2008, without resolution. According to the Organization, the contracted work commenced on November 20, 2008.

This is the same notice and dispute decided by the Board in Third Division Award 40959, with the exception of the covered work dates.

In Award 40959, the Board found that the Carrier's notice was adequate under Rule 52; the Carrier met its conference obligations under that Rule; the Carrier has contracted out bridge repair work in the past and claims protesting such action under Rule 52 have been denied; the prior precedent was not palpably in error and, for purposes of stability, must be followed; and the Organization's arguments could not change the result. For reasons more fully expressed in Award 40959, this claim must also 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 14th day of April 2011.