

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42109
Docket No. MW-42146
15-3-NRAB-00003-130084**

The Third Division consisted of the regular members and in addition Referee Patrick Halter 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 (A. R. Johnston Co.) to perform Maintenance of Way weed and brush cutting duties on the right of way between Mile Posts 1 and 15 near Portland and Gresham, Oregon on August 5, 6 and 7, 2011 (System File T-1152U-520/1561813).**
- (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 the aforesaid work and when it failed to make a good-faith effort to reach an understanding or to reduce the incidence of contracting out scope covered work and increase the use of its Maintenance of Way forces as required by Rule 52 and the December 11, 1981 National Letter of Agreement.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants M. Hallgren, B. Nelson and T. Shepard shall now each be compensated for thirty (30) hours at their respective overtime 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.

Having reviewed the record, the Board finds that this claim was timely and properly presented and handled by the Organization at all stages of appeal up to and including the Carrier's highest designated officer. As a result of that review, the Board is fully apprised of the Organization's and the Carrier's arguments including documents relied upon (emails, statements) and precedent cited (arbitral Awards) by each Party in support of its position.

The claim dated October 3, 2011 presents the issue as to whether the Carrier complied with the Collective Bargaining Agreement when it assigned outside forces to perform weed and brush cutting duties on the right-of-way near and within Portland, Oregon, on August 5, 6 and 7, 2011. "The said contractors utilized for track sub department work were observed performing the said work with three men, a tractor mower, and two trucks." The claimed work was performed on the Claimants' rest days.

The claimed work - "weed and brush cutting duties on the right of way" - is scope-covered (Rule 1) because the Claimants customarily and historically perform such work. The Carrier's May 16, 2011 notice coincides with the same kind of notice issued in Third Division Award 42110 and the claimed work in this proceeding encompasses the same kind of claimed work in on-property Third Division Award 42075 ("cut weeds and brush and related work"). Each Party's arguments and relied-upon precedent in this proceeding are at least substantively

similar, if not identical, to those in Award 42075 wherein the Board denied the Organization's claim. The Board will not deviate from the precedent established in Award 42075 in this proceeding, because its findings and conclusion are not exposed as palpably erroneous. Therefore, 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 13th day of July 2015.