

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42118
Docket No. MW-42179
15-3-NRAB-00003-130118**

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 Company) to perform Maintenance of Way weed and brush cutting duties on the right of way between Mile Posts 5 and 22 near Portland, Oregon on August 15, 17, 18, 20 and 21, 2011 (System File T-1152U-522/1561815).**
- (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, M. Kuntz, D. Jolly and J. Campbell shall now each be compensated for thirty (30) hours at their respective straight time rates of pay and for twenty (20) 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.

On May 26, 2011, the Carrier issued the notice set forth below to the Organization:

“Subject: 15-day notice of our intent to contract the following work:

Location: Portland Service Unit – Portland Subdivision, Kenton Line Seattle Subdivision to include all terminals and Main Tracks Portland to Seattle to Wellsberg Jct.

Specific Work: Provide equipment support, including but not limited to back hoes, excavators, trucks, etc., on an as-needed basis to assist maintenance of way forces in the performance of their duties. Work may also include, but not limited to road crossing repairs (including asphalt, track removal/replacement), traffic control equipment transloading, brush cutting/mowing, fence repair/installation, dust control (spraying), right of way road grading, removal of yard and right of way debris/material and provide necessary equipment support for derailment assistance/cleanup. Any new construction work with Port of Portland.

Serving of this ‘notice’ is not to be construed as an indication that the work described above necessarily falls within the ‘scope’ of your agreement, nor as an indication that such work is necessarily reserved, as a matter of practice, to those employees represented by the BMW.

In the event you desire a conference in connection with this notice, all follow-up contacts should be made with Dominic Ring in the Labor Relations Department at phone (XXX) XXX-XXXX.”

Having carefully 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.

Specifically, the Organization filed its claim on October 7, 2011 alleging that the Carrier improperly assigned scope-covered work (weed and brush cutting) to outside forces without advance notice as required pursuant to Rule 52 and the December 11, 1981 Berge-Hopkins Letter of Understanding (LOU). The Carrier denied the claim on November 30, 2011 by asserting a 32-year practice of using outside forces for vegetation control and argues that the LOU is not applicable. The Organization filed an appeal on January 27, 2012 wherein it essentially reiterated arguments presented in the claim and contested the Carrier’s assertion about past practice. The Carrier denied the appeal on March 12, 2012 by mainly reaffirming its arguments set forth in its declination letter.

The May 26, 2011 notice along with the claimed work of “weed and brush cutting duties on the right of way” in this proceeding were presented and argued in on-property Third Division Award 42075 where the same notice and the same kind of claimed work (“cut weeds and brush and related work”) were adjudicated with the claim being denied by the Board. Third Division Awards 42078, 42080 and 42081 follow the same path and reached the same conclusion rendered in Award 42075. Each Party’s arguments and the arbitral precedent in Award 42075 are repeated, referenced and relied upon in this case. The Board will not parse the reasoning or deviate from the conclusion in Award 42075. Therefore, the instant claim is denied.

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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.