

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42190
Docket No. MW-41909
15-3-NRAB-00003-120198**

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp 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 (Meridian Fence Company) to perform Maintenance of Way and Structures Department work (repair existing fence) along the right of way between Mile Posts 447.50 and 447.75 on the Nampa Subdivision on November 12, 15, 16, 17, 18 and 19, 2010 (System File C-1052U-674/1545102).**
- (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 J. Frost, S. Horton, J. Miller, C. Reynolds and D. Salisbury shall now each be compensated at their respective and applicable rates of pay for a proportionate share of the total straight time and overtime man-hours expended by the outside forces in the performance of the aforesaid work.”**

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.

This claim was filed after an outside contractor, Meridian Fence Company, repaired a section of chain link fence located between Mile Posts 447.50 and 447.25 on the Nampa Subdivision in November 2010. The Organization contends that fence repair is traditional Maintenance of Way work, and in contracting it out, the Carrier violated Rule 52 of the Parties' Agreement.

The evidence in the record establishes that the fence repairs were requested by a local school district, which paid for the repairs, to keep students from cutting across the tracks on their way to and from school. Manager Jim Asmussen stated:

“The Union Pacific did not hire or pay the fencing contractors. The Kuna school district did. The chain link fence was put in place by the school district for the protection of the grade school children that were cutting across the railroad on their way to school. By installing the fence they directed the children to the gated crossing to cross over the tracks. The railroad's only part in the installation of the fence was to flag at the temporary road crossing that was installed to access the area by the contractors, and UP employees were used for this. I have been an engineering employee of Union Pacific since 5/1/1979. I have worked all of the jobs listed in this claim plus several others. I have never built or repaired a fence like this. Chain link with poles that are cemented in.”

The Organization did not refute this evidence.

The Board has previously held that the Agreement is not violated when contractors are working under the control and for the benefit of a third party. In addition, the school district paid for the fence work. In essence, the work fell outside the scope of the Parties' Agreement. The work has to be authorized by the Carrier, and its performance must be, to some extent, coordinated by UP, to fit in with its own maintenance and train schedules, but those elements do not bring the project within the scope of the Parties' Agreement. There was no violation of the Agreement, because this was not work performed or undertaken by the Carrier for its benefit; nor was it paid for by the Carrier. Accordingly, the 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 28th day of October 2015.