

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42232  
Docket No. MW-42067  
15-3-NRAB-00003-120444**

**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 (Horizontal Boring and Tunneling) to perform Maintenance of Way and Structures Department work (install culverts) in the vicinity of Mile Post 330.6 on the Blair Subdivision commencing on June 6, 2011 and continuing through June 17, 2011 (System File B-1152U-104/1557719).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with an advance written notice of its intent to contract out said work or make a good-faith effort 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 E. Bartlett, L. Ring, M. Coan, R. Frenzen and J. Snell shall now ‘\*\*\* be allowed an equal share of the straight time and overtime hours worked by the outside contractor forces as described in this claim, at their respective Group 1 and 3 rates of pay, both straight time and overtime \*\*\*.’”**

**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.

In the late spring and early summer of 2011, historically unprecedented flooding occurred in the upper Missouri River Basin. This claim alleges that the Carrier improperly used Horizontal Boring and Tunneling to install a culvert at Milepost 330.6 on the Blair Subdivision, an area affected by the flooding, and that the Carrier's own Bridge & Building forces should have been used to perform the work. The Organization also contends that the Carrier violated the notice provisions of Rule 52, in that it failed to provide notice to the Organization of the contracting transaction in advance.

Rule 52(a) states:

“(a) By agreement between the Company and the General Chairman, work customarily performed by employees covered under this Agreement may be let to contractors and be performed by contractors' forces. However, such work may only be contracted provided that special skills not possessed by the Company's employees, special equipment not owned by the Company, or special material available only when applied or installed through supplier, are required; or when work is such that the Company is not adequately equipped to handle the work, or when emergency time requirements exist which present undertakings not contemplated by the Agreement and beyond the capacity of Company's forces. In the

event the Company plans to contract out work because of one of the criteria described herein, it shall notify the General Chairman of the Organization in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than fifteen (15) days prior thereto, except in 'emergency time requirements' cases. If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the Company shall promptly meet with him for that purpose. Said Company and Organization representative shall make a good faith attempt to reach an understanding concerning said contracting but if no understanding is reached the Company may nevertheless proceed with said contracting, and the Organization may file and progress claims in connection therewith. (emphasis added)

Rule 52(a) recognizes that emergency situations may require the Carrier to use outside forces to perform work that needs to be done, and “emergency time requirements” are one of the exceptions to the limitations on subcontracting that Rule 52 otherwise imposes. In addition, the notice requirement of Rule 52(a) is waived in an emergency.<sup>1</sup>

The Organization contends that the culvert work at Milepost 330.6 was not, in fact, undertaken due to the flooding that occurred along the Missouri River and that there was no emergency that would warrant an exception to Rule 52(a). The evidence in the record thoroughly refutes the Organization’s position. The record is replete with evidence of massive flooding in the area where and when the work was done, and of emergency efforts at all levels of government and private enterprise, including the Carrier, to deal with the disaster. The Army Corps of Engineer’s “shape files” of the projected flooding indicated that UP tracks could be underwater anywhere from a few inches to as much as three feet, disrupting traffic. The Carrier engaged in an all-out effort to raise at-risk tracks throughout the region in an effort to avoid their being flooded out. The culvert work at Milepost 330.6 in particular was done in response to a request from the city of Missouri Valley, for the Carrier to provide additional drainage capacity to offset capacity lost by raising the tracks. Emergencies come in different types. Some are entirely unexpected, like a derailment or collision. Others

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<sup>1</sup> See also, Rule 52(c).

may not be entirely unforeseen, but that does not rob them of their essential character as emergencies. The nature of the flooding that occurred here is that it does not occur in all affected locations at once. Instead, it travels downstream from one location on the river to the next; the fact that one can see the flood coming does not make it any less an emergency in the making or a disaster when it hits.

The Carrier established that the circumstances surrounding the work in question constituted an emergency, and it did not violate Rule 52 or its notice requirements when it used a contractor to perform the work.

**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 17th day of November 2015.