

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42234
Docket No. MW-42095
15-3-NRAB-00003-130020**

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 327.2 on the Blair Subdivision commencing on June 6, 2011 and continuing through June 17, 2011 (System File B-1152U-105/1557718).**
- (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 327.2 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 state of the record is such that it is not necessary for the Board to go into substantial detail in this case. This is one of two similar claims, the other being Third Division Award 42232, which makes the same complaint for similar work done at Milepost 330.6. The Organization alleges that Horizontal Boring and Tunneling installed a culvert at Milepost 327.2. However, there is no actual evidence from the Organization to support its claim that any culvert work occurred at MP 327.2. The photographs in the record submitted by the Organization are identified as Milepost 360.6. Moreover, when asked by the Engineering Supervisor about the claims, the Carrier's Project Manager, P. G. Prosocki, described in detail the work that was done at Milepost 330.6, and the circumstances under which it was done. Then he wrote: "The other location you have noted is 327.72. I did not have any work done at that location." (emphasis added)

In the absence of any evidence that the allegedly improper work even occurred, the Board is compelled to dismiss the case. In addition, the Board notes that if the work had occurred, it was undertaken under emergency conditions, and the case

would have been denied. Emergencies are one of the exceptions to the limitations on contracting out otherwise set forth in Rule 52(a), and under Rule 52(c) the notice requirement for contracting out is waived in cases of emergency.

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.