

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42253
Docket No. MW-41963
16-3-NRAB-00003-120306**

The Third Division consisted of the regular members and in addition Referee Sinclair Kossoff when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
(Union Pacific Railroad Company (former Missouri
(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 (Bayou City Rail Construction Company) to perform Maintenance of Way Department work (remove ballast retainers and hand railings on deck bridges ahead of tie gangs) between Mile Posts 282.7 and 221.34 on the Angleton Subdivision beginning on February 22, 2011 and continuing through March 4, 2011 (System File UP959PA11/1552184 MPR).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper advance notice of its intent to contract out said work or make a good-faith effort to reach an understanding and reduce the amount of contracting as required by Rule 9 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 M. James, L. Montegut, J. Sewell and D. Freeman shall now each be compensated for seventy (70) hours at their respective straight time rates of pay and for twenty (20) hours at their respective time and one-half 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.

By letter dated January 17, 2011, the Director of Bridge Maintenance served a 15-day notice on the General Chairmen of the Organization in five different states to advise them of the Carrier's intent to contract out described project work on bridges at 86 listed mileposts on the Angleton Subdivision. The work was described in the notice as follows:

“Specific Work: project work consisting of changing entire decks including all tie and guard timbers, installing new walkways, lining bridges for proper FRA compliance, when required changing shims, sills, caps, braces, tightening bolts, changing ballast retainers, backwalls and other incidental bridge work. As indicated above some bridges may require stringer replacement as well as bent work such as posting piles, changing bracing framing existing bents.”

The notice also contained the following protective language:

“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 BMWED. In addition to a practice of this work being performed by outside concerns the Carrier does not have sufficient manpower to perform this work in a timely manner.”

The notice included a Labor Relations Department telephone number in the event the Organization desired a conference in connection with the notice.

This case is a companion case to Third Division Award 42251, which was conferenced without resolution on the same day as the prior case – August 12, 2011 – and then re-conferenced on November 29, 2011, without agreement being reached. The work contracted out in this case was covered by the same 15-day notice as the work that was let in Award 42251. The claims in both cases involve the work of removing ballast retainers on deck bridges, with this case involving the additional task of removing hand railings on the bridges. The arguments of the Parties are substantially identical in both cases. Both cases involve the procedural issue of whether the notice issued by the Carrier violated either Rule 9 or the requirements of the December 11, 1981 Letter of Understanding. For the reasons stated in Award 42251, the Board – without ruling on the disputed issue between the Parties of whether the Letter of Understanding is a viable document – finds that the Organization has not established that the Carrier's notice in this case violated either Rule 9 or the Letter of Understanding. Regarding the substantive merits of the claim, the Board also finds that the Organization has not established a violation on the part of the Carrier for the reasons discussed in Award 42251. The claim will therefore 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 29th day of February 2016.