

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42498
Docket No. MW-41958
17-3-NRAB-00003-120288**

The Third Division consisted of the regular members and in addition Referee Robert A. Grey when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Southern
(Pacific Transportation Company [Western Lines])**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Herzog) to perform Maintenance of Way work (remove dirt and debris along the tracks and ditches and related right of way cleaning duties) between Mile Posts 356 and 348 on the Los Angeles Division beginning on February 25, 2011 and continuing through March 30, 2011 (System File T-1159S-513/1553828 SPW).**
- (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 the aforesaid work and when it failed to make a good-faith attempt to reach an understanding and to reduce the incidence of contracting out scope covered work and increase the use of its Maintenance of Way forces as required by Rule 59 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, Claimant K. Mack shall now be compensated for one hundred eighty-five (185) hours at his respective straight time rate of pay and for two hundred twenty-six (226) hours at his respective overtime rate 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.

The record demonstrates that the Carrier's unrefuted statement of emergency was exchanged in a timely manner with the Organization during the on-property conference. The Carrier met its burden to prove that an "emergency time requirement" situation existed, thus relieving the Carrier of its obligation to provide advance notice to the Organization before contracting out.

The Organization's remaining arguments are unpersuasive on this record.

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 11th day of January 2017.