

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42500
Docket No. MW-41973
17-3-NRAB-00003-120333**

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 (Rick Franklin Corporation) to perform Maintenance of Way and Structures Department work (remove snow) from railroad access roads on the Cascade Subdivision on February 16, 17, 24, 25, 26, 28, March 1, 2, 3, 4 and 7, 2011 (System File T-1159S-509/1552874 SPW).**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with an advance notice of its intent to contract out the aforesaid work or make a good-faith effort to reduce the incidence of subcontracting and increase the use of Maintenance of Way forces in accordance with the provisions of Rule 59, Article IV of the May 17, 1968 National Agreement 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 D. Borton, C. Roat, G. McDonald and E. McDougall shall now each be compensated for eighty-eight (88) hours at their respective straight time rates of pay and for eighteen (18) hours at their respective overtime 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.

The record establishes that the work in question was performed on land owned by the United States Forest Service. The Carrier does not own, lease or maintain the land where the work was performed.

The Organization has not proven that it has the right to perform work on property not owned, leased or maintained by the Carrier. Therefore, the Organization has not met its burden of proof, and the claim must be denied.

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.