

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42501
Docket No. MW-42022
17-3-NRAB-00003-120390**

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 Company) to perform Maintenance of Way and Structures Department work (load and haul accumulated and piled asphalt) from the Eugene Yard to Wildish Sand and Gravel for recycle on March 8 and 9, 2011 (System File T-1159S-516/1554896 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 National Letter of Understanding.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants W. Grotte and D. Wells shall now each be paid for twenty (20) hours at their respective straight time 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.

Rule 59 of the Agreement applies to scope-covered work which the Carrier plans to subcontract out. In this case, the Carrier did not plan to contract out, nor did the Carrier actually contract out.

Although the contractor performed work on Carrier property, the contractor was moving Amtrak asphalt at the request and direction of Amtrak, not the Carrier. The Amtrak asphalt was temporarily staged by Amtrak's contractor on Carrier property because the recycling facility that Amtrak's contractor was bringing the asphalt to, was closed on the particular day the contractor arrived. Shortly thereafter, Amtrak's contractor removed the Amtrak asphalt to the recycling facility on a day when the facility was open for business.

The work performed by Amtrak's contractor was not at the request, direction, or control of the Carrier. The contractor contracted with, and was paid by, Amtrak, not the Carrier. The work was at the behest of, and to the benefit of, Amtrak, not the Carrier. Therefore, the Carrier did not violate the Agreement.

AWARD

Claim denied.

**Form 1
Page 3**

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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.