

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42502
Docket No. MW-42031
17-3-NRAB-00003-120401**

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference
(
(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 (Jim Dobbas, Inc.) to perform Maintenance of Way and Structures Department work (excavate, load, haul and place excavated material) at Cobble Spur near Oroville, California beginning on April 4, 2011 and continuing (System File RC-1159S-460/1555133 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 K. McDonald, C. Gendreau, K. Roth, B. Barton, D. Owen and M. Winslow shall now ‘. . . each be paid an equivalent amount of hours of straight time at their respective rates of pay, for the work performed by the Jim Dobbas, Inc. employees on the dates identified above. ***”

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.

Carrier's Manager's Casualty Work Order No. 10165, for mainline track 1, Mile Posts 143 to 171.25, described the work needed due to "Storm/Heavy Rain", as follows: "This work was initially done with 6 cars of ballast and 1 excavator and 1 work train that repair did not correct the problem and the scope of the work has increased and now requires a casualty the track is currently out of service and being worked on."

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.

On the record before this Board, the existence of in-service mainline track 2 did not negate the emergency time requirement involving out-of-service mainline track 1.

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.