

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42504
Docket No. MW-42232
17-3-NRAB-00003-130210**

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 (Jimco, Inc., Demo Unlimited and Vance Corporation) to perform Maintenance of Way work (dismantle, remove/replace track and related work) on Tracks 201, 202, 203 and 204 in the West Colton Receiving Yard at Colton, California beginning on January 3, 2012 and continuing (System File RC-1259S-452/1565322 SPW).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper 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, Claimants R. Mojarro, B. Long, E. Perez, A. Martinez and G. Magdaleno shall now each be compensated for twelve (12) hours at their respective and applicable rates of pay for each date the outside forces performed the aforesaid work beginning on January 3, 2012 and continuing.”**

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 Claimants have established and hold seniority in various classifications within the Maintenance of Way and Track, System Work Equipment and Water Service Sub-departments on the Los Angeles Division of the Western Seniority District. During the relevant time period, they were assigned to their respective positions within the Track Sub-department.

Based upon the facts in this record, the Board is not persuaded by the Carrier's procedural argument that the claim was filed under the wrong Agreement.

Turning to the merits, Rule 59(a) requires the Carrier to provide notice, "in any event not less than 15 days prior [to the date of the contracting transaction]." The Board notes that Rule 52 of the July 1, 2001 UP Agreement (which the Carrier argues the Claim should have been filed under) contains the identical "in any event not less than 15 days prior" mandatory language.

Carrier's notice was dated December 27, 2011, and the subcontractor began scope-covered work on January 3, 2012. Thus, the Carrier inexplicably failed to give not less than 15 days prior notice, thereby violating either Agreement.

In light of the above, it is not necessary to determine the alleged insufficiency of the Carrier's notice.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 11th day of January 2017.