

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42505
Docket No. MW-42344
17-3-NRAB-00003-130332**

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) to perform routine Maintenance of Way Track Sub-department work (cut and remove fallen trees from right of way) near Mile Post 571.65 near Oakridge, Oregon commencing on March 24, 2012 through April 25, 2012 (System File T-1259S-520/1572520 SPW).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman an advance notice of its intent to contract out said work and when it failed to make a good-faith effort 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 G. Skordahl shall now be compensated for a total of sixteen (16) hours at his respective straight time 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.

It is undisputed that heavy rains caused mudslides in five separate locations between mileposts 571.65 and 575.20, blocking right of way roads and tracks, including the mainline, with mud and fallen trees. The Carrier's operations were suspended in whole and in part. Additionally, an Amtrak passenger train was derailed and trapped by mud and by fallen trees across the tops and against the sides of passenger cars.

The Organization's claim that the outside forces performed "routine" cutting and removing of fallen trees from right of way during the emergency is not supported by the record.

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.

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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.