

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42570
Docket No. MW-42023
17-3-NRAB-00003-120393**

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 (R. J. Corman) to perform Maintenance of Way and Structures Department work (haul and unload/place ballast and spray water on right of way roads, in connection with track construction) between Mile Posts 900 and 916 near Casa Grande, Arizona beginning on March 15, 2011 and continuing through May 9, 2011 (System File T-1159S-518/1554899 SPW).**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with a proper 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 A. Baldenegro and A. Diaz shall now each be compensated for three hundred and twenty (320) hours at their respective straight time rates of pay and for two hundred and ninety-six (296) 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.

Based upon the undisputed facts in this record, the Board is persuaded by the Carrier's procedural argument that the claim was filed under the wrong Agreement.

The work involved in this claim was system work, covered by the UP-BMWE Agreement, not by the SPWL-BMWE Agreement under which the claim was erroneously filed. See on-property Third Division Award 40809.

Therefore, the claim is procedurally defective and must be denied.

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 19th day of April 2017.