

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42571
Docket No. MW-42033
17-3-NRAB-00003-120405**

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 (Herzog) to perform Maintenance of Way and Structures Department work (right of way ditch cleanup) between Mile Posts 332 and 336 near Gaviota, California on the Los Angeles Division beginning on April 16, 2011 and continuing through April 30, 2011 (System File T-1159S-522/1556439 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 Agreement.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant K. Mack shall now be compensated for one hundred and twenty (120) 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.

As the claiming party, the Organization has the burden of proving the merits of its claim by presenting substantial evidence in support thereof.

The Organization's evidence consists of the Claimant's statement and the Claimant's payroll records. The Board notes that the Claimant's statement is dated April 1, 2011, 15 days before the alleged commencement of contractor performance, which is the subject of the claim. The Claimant's statement contains no dates, times or hours of alleged contractor performance. It contains no locations of alleged contractor performance other than Claimant's "District." The Claimant's statement and payroll records are not sufficiently probative of the claim.

The Carrier raised this issue during the on-property handling of this dispute. On the record before the Board, the Organization's responses to the claim do not cure the lack of prima facie evidence in support of the Claim.

The Board therefore finds that the Organization has not met its burden of proof, and the claim must be denied.

In light of the above, the Board does not reach the parties' other arguments.

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 19th day of April 2017.