

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42610  
Docket No. MW-41974  
17-3-NRAB-00003-120334**

**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 (H&H Railroad Contractors) to perform Maintenance of Way and Structures Department work (remove/replace crossings and related work) within the ICTF Facility in Long Beach, California beginning on February 14, 2011 and continuing through April 4, 2011 (System File D-1159S-202/1553179 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 M. Arambula, C. Carrillo, M. Daddato, I. Mojarro and R. Sabala shall now each be compensated at their respective straight time rates of pay for a proportionate amount of the total man-hours expended by the outside forces in the performance of the aforesaid work.”**

**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.

By a mutually-signed side-letter dated May 3, 1985, the parties agreed that the Carrier could contract-out the paving or repaving of street crossings, "with the understanding that Company Maintenance of Way forces will perform any related track work in connection with the street crossings." Thus, the claimed work is scope-covered work, reserved in writing to Organization members. See on-property Third Division Awards 36829 and 40932.

The nine Organization members' factual statements in the record establish that Organization forces have performed this scope-covered work in the Intermodal Container Transfer Facility ("ICTF") prior to the dates involved in this claim. The Organization has met its burden to prove the claim.

The Carrier has not met its burden to prove the affirmative defenses it has asserted. The Board notes that the two Carrier managers' statements in the record do not suffice to establish that street crossing work in the ICTF is exempt from the May 3, 1985 side letter agreement reserving such work to the Organization, or that Organization forces have not and cannot work in the ICTF. Thus, the record establishes that the Carrier is in violation.

Claimants have established and hold seniority in their respective classes in the Track Sub-department. They were regularly assigned to their respective positions within the Los Angeles Division on the dates involved here.

The Board has carefully reviewed the on-property Awards regarding the Board's authority, or lack thereof, to impose monetary remedies for contracting-out violations. The Board is persuaded by the more recent line of on-property Awards in which the Board did impose monetary remedies for lost work opportunities. See Third Division Awards 36829, 36964 , 40372 and 40932. The Board notes that two of these Awards (36829 and 40932 ) imposed monetary remedies for violation of the May 3, 1985 side letter agreement involved in this claim.

None of the above-cited on-property Awards are palpably erroneous. The Board notes that neither party dissented from any of them. Nothing in the record provides a basis for deviating from the on-property precedent established by these Awards. They will therefore be followed in the interest of stability.

**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 2nd day of June 2017.