

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43527
Docket No. MW-42645
19-3-NRAB-00003-140338**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

**(Union Pacific Railroad Company (former Missouri
Pacific Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Capital Railroad) to perform Maintenance of Way Department work (unloading rail) between Mile Posts 116 and 118 on the Jefferson City Subdivision on April 20 2013 (System File UP607BT13/1585677 MPR).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper advance notice of its intent to contract out said work or make a good-faith effort to reach an understanding and reduce the amount of contracting as required in Rule 9 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 K. Malzner, J. Wilfong and D. Meador shall now each ‘... be paid for twenty-four (24) hours at his respective rate of pay (as well as credits and benefits flowing there from).
***” ”**

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 all established and retain seniority within the Track Sub-Department of the Carrier's Maintenance of Way Department. On the dates relevant to this dispute, they were regularly assigned to the Jefferson City Subdivision.

"On December 16, 2011, the Carrier provided notice of its intent to contract out:

This is a 15-day notice of our intent to contract the following work:

Location: Between mile posts 116.13 and 117.38 on the Railroad's Jefferson City Subdivision near Osage, Missouri

Specific Work: Contractor to furnish all labor, supervision, equipment, tools, and material (except Railroad-furnished material) to construct a second mainline bridge project over the Osage River that includes construction of a 1232' steel girder bridge with drilled shaft construction adjacent to the existing mainline bridge. Scope of work includes extending the existing mainline bridge on the west end as well as installing culverts, track roadbed, ties, rail, grading, and other items per bid package and design drawings provided by Railroad. Full scope of work to be covered at the pre-bid showing.

Serving of this "notice" is not to be construed as an indication that the work described above necessarily falls within the "scope" of your agreement, nor as an indication that such work is necessarily reserved,

as a matter of practice, to those employees represented by the BMW.

In the event that you desire a conference in connection with this notice, all follow-up contacts should be made with the Labor Relations Department representative responsible for your collective bargaining agreement.”

The Organization requested a conference and the parties met to discuss the notice, but no agreement was reached.

On April 20, 2013, the Carrier utilized employees of an outside contractor to unload a rail train on a Saturday between Mileposts 116 and 118. This claim followed.

The Organization contends that the Carrier has improperly contracted out work that is historically and customarily performed by members of the Maintenance of Way. The Organization contends that the Carrier failed to properly notify the General Chairman of its intention to assign the work, failed to discuss the intended contracting in good faith, and failed to assert any reason that would justify the use of an outside contractor.

The Carrier contends that it has a deep-rooted past practice of contracting out track maintenance work and that the parties’ Agreement recognizes its right to utilize such outside forces. The Carrier contends that it provided advance notice to the General Chairman of its intent to contract out the work in question. The Carrier contends that unloading rail was an incidental component of the new construction project and that it was not required to piecemeal the work.

Rule 9 requires the Carrier to give notice of proposed contracting, except under emergency conditions. The Agreement itself does not state what type of notice is required, but this is not an issue of first impression for this Board. Prior decisions have recognized the Carrier’s right to subcontract this type of work, albeit work customarily and traditionally performed by Maintenance of Way employees. See Third Division Award 29014 (construction of new track and relaying old track); Third Division Award 29020 (retirement of tracks and turnouts); Third Division Award 31285 (removal and installation of track and ties).

Therefore, attention must turn to whether the Carrier was able to contract out the specific work involved in this dispute. The Organization contends that the notice

was insufficient in this case to allow for a free exchange of ideas prior to the contracting transaction. However, a contracting conference was held in which both parties participated.

Having reviewed other Awards between the parties discussing the type of notice that must be given pursuant to Rule 9, this Board concludes that the notice herein was not deficient.

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 27th day of March 2019.