AWARD NO. 3
CASE NO. 3

PUBLIC LAW BOARD NO. 6249

PARTIES TO DISPUTE	)	**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**
	)	
	)	**UNION PACIFIC RAILROAD COMPANY (FORMER SOUTHERN PACIFIC TRANSPORTATION COMPANY (EASTERN LINES))**

STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier allowed or otherwise assigned outside forces (Metric Construction Company) to perform Maintenance of Way foreman's duties (flagging) at Mile Post 61 in Schriever, Louisiana from March 18 through April 22, 1994 (System File MW-94-306/BMW 94-591 SPE)

2. The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intention to contract out said work as required by Article 36.

3. As a consequence of the violations referred to in Parts (1) and/or (2) above, furloughed Track Foreman T. G. McGill shall be allowed two hundred eight (208) hours' pay at the track foreman's straight time rate and twenty-six (26) days' credit for vacation purposes.

OPINION OF BOARD

The Organization asserts that a contractor's employee performed flagging work and the Carrier did not meet its obligations under contracting out provisions of Article 36.

The factual premise of the Organization's argument is that a contractor's employee performed the disputed flagging work. However, the record does not sufficiently support that factual assertion. The Carrier supplied a statement from District Engineer T. A. Johnson that "Track Foreman Andrus was the flagging employe." Further, Regional Engineer B. L. Reinhardt stated that "... there has been a Southern Pacific flagman assigned to this location since the onset of this job."

At best, the record is in dispute over the crucial fact concerning whether a contractor's employee performed the flagging work. This

kind of dispute cannot support a finding needed by the Organization to show that the work was even contracted out, let alone improperly so. Without more, the claim must be denied for lack of proof.

AWARD

Claim denied.

Edwin H. Benn
Neutral Member

Carrier Member

Organization Member

Dated: 6-21-02