

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22538  
Docket Number MW-22591

John J. Mangan, Referee

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees  
(  
(Fort Worth and Denver Railway Company

**STATEMENT OF CLAIM:** "Claim of the System Committee of the Brotherhood that :

(1) The Carrier violated the Agreement when, without an Agreement having been reached between the Carrier and the Brotherhood as required by Rule 4(b), it assigned the work of dismantling and reconstruction of the main line track between Lakeside and East Third Street at Amarillo, Texas to outside forces (System File F-17-77/MS-2).

(2) The Carrier violated the Agreement when, without an Agreement having been reached between the Carrier and the Brotherhood as required by Rule 4(b), it assigned the work of constructing approximately 2000 feet of track to by-pass existing main line between Lakeside and East 3rd Street at Amarillo, Texas to outside forces (System File F-14-77/MS-2).

(3) The foreman and members (listed below) of the Amarillo section crew each be allowed pay at their respective straight time and overtime rates for an equal proportionate share of the total number of man-hours expended by outside forces in the performance of the work referred to in Part (1) hereof.

B. B. Levitt, Foreman	F. P. Simmons, Laborer
E. Navarro, Laborer	W. A. Cunningham, Laborer
L. Thrilkill, Laborer	F. H. Escalante, Laborer

(4) The foreman and members (listed below) of the Amarillo section crew each be allowed Pay at their respective straight time and overtime rates for an equal proportionate share of the total number of man-hours expended by outside forces in the performance of the work referred to in Part (2) hereof.

D. R. Kelly, Foreman	F. P. Simmons, Laborer
E. Navarro, Laborer	W. A. Cunningham, Laborer
L. Thrilkill, Laborer	F. H. Bscalante, Laborer

"(5) Road Equipment Operator C. Bums be allowed pay at his straight time and overtime rate for an equal number of man-hours as was expended by outside equipment operators in the performance of the work referred to in Parts (1) and (2) hereof."

**OPINION OF BOARD:** The State of Texas planned to change Lakeside Drive, on the southern edge of **Amarillo**, from a two-lane road into a four-lane highway. The construction **work** involved the elimination of a grade crossing by building bridges **and** an underpass.

In order to continue service on the main line, it was necessary that the Carrier build shooflys around part of the work during construction of the auto road and one full depth plank crossing where the main line **shoofly** crossed Lakeside Drive.

None of the State's construction work has been an issue in this case.

In order to construct the bridges over the highway, it was necessary to remove trackage from the Carrier's main line and an industrial track. The employes of the Carrier **removed** these tracks and replaced them after **all** construction work was completed.

The Carrier retained a private contractor to build shooflys in order to continue service during the period the main lines were inoperative at the bridge locations.

**The** Organization claimed that all of the work to be performed by the Carrier on this project should be performed by employes of the **Carrier**. The Carrier consented that all work to be done on the main line would be by its employes, but that the construction work on the **shooflys** would be contracted out because the shooflys and the depth planking were not on the right-of-way.

The Carrier's track forces performed all the work necessary to remove the tracks and restore them. They also removed the shooflys.

The Organization claimed that the Carrier violated Rule **4** (b) of the **Agreement** between the parties which reads:

"Contracting (b): **Employees** included within the scope of this agreement in the Maintenance of Way and Structures Department perform work in connection with the construction, maintenance or repairs of, and **in** connection with the dismantling of tracks, structures or facilities located on the right of way and used in the operation of the **Company** in the performance of Common carrier **service**.

"Work as described in the preceding paragraph may not be contracted to outside parties, except by agreement with the Brotherhood, unless special **skills** not **possessed** by company employees, special equipment not owned by the company, or special material available only when applied or installed **through** supplier, are required; or unless work is **such that** the Company is not adequately equipped to **handle** the work; or, **time** requirements must be met which are beyond the capabilities of **company** forces to meet.

"**In** the event the **Company** plans to contract out work because of one of the criteria described herein, it **shall notify** the General Chairman of the Organization **in** writing as far **in** advance of the date of the contracting transaction as is practicable and in **any** event not less than fifteen **(15)** days prior thereto."

**The** Carrier sets up the defense that notice of the proposed project had been given to the Organization, **but** no agreement was reached by the parties. **The** Carrier states further that **no** agreement was necessary between the Organization and the Carrier because the work was not to be performed on the right-of-way.

The **record** makes clear that the construction of the **shooflys** and the depth **plank** crossing are **not** on the right-of-way. Under the circumstances, the Carrier was not required to obtain the agreement of the Organization and the Agreement was not violated. See Awards 4783,

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10722, 19253 and others. Accordingly the Claim is denied.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the **evidence**, finds and holds:

**That** the parties waived oral hearing;

That the Carrier and the **Employees** involved in this dispute are respectively Carrier and Rmloyes within the meaning of the Railway Labor Act, as approved June **21**, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was **not** violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: \_\_\_\_\_

*A. W. Paulos*  
Executive Secretary

Dated at Chicago, Illinois, this 28th day **of** September 1979.