

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Grand Trunk Western Railroad Company NTI

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

(1) The Carrier violated the Agreement when, without benefit of mutual agreement between the Chief Engineer and the General Chairman, it assigned outside forces to perform track work in connection with a derailment at Quincy, Ohio December 4 through December 14, 1982 (Carrier's Files 8265-1-151 and 8365-1-156).

(2) As a consequence of the aforesaid violation, furloughed Backhoe Operator S. K. Pollock shall be allowed eight (8) hours of pay at the backhoe operator's straight time rate for each day during the claim period on which a backhoe was used by an outside concern and the following named furloughed employees shall each be allowed pay at their respective rates for an equal proportionate share of the number of man-hours expended by outside forces in the performance of other than backhoe operator's work.

Abercrombie, William G.
Adams, William T.
Allen, Robert L.
Angerer, Randy L.
Back, Vaughn
Barnes, Jack L.
Barrie, II, James A.
Baughman, Joseph A.
Beekman, Donald C.
Bellman, Kevin R.
Bonner, Perry A.
Brady, Rickey L.
Bunker, David H.
Buttrey, Homer D.
Clark, William M.
Cook, Mark L.
Cross, Douglas K.
Culverson, Darrly A.
Davis, Darry A.
Donnelly, Terry L.
Erickson, Leon R.
Floyd, Leslie A.

Gibson, David B.
Gilbreath, Roland H.
Glinke, Willard G.
Graham, Kenneth E.
Griffin, Jr., James C.
Grube, Carl B.
Gulliver, Jerry J.
Hartsock, Harry
Hazy, Charles J.
Heidner, John W.
Hensley, Randall L.
Herhager, David M.
Hiegel, Michael
Higgins, James C.
Hughes, Thomas G.
Hurstons, Douglas H.
Hurstons, Ricky G.
Hussey, Richard Mac
Hutchinson, Mark A.
Johnson, Karl W.
Jones, David R.
Kalan, Philip S.

Kearney, Richard C.
Keefer, Robert B.
Kreinbrink, Richard C.
Kritzwiser, Greg A.
Lambert, David C.
Lambert, Steve A.
Lantz, Ricky D.
Larnhart, Richard M.
Laws, Benjamin
Lee, Timothy A.
Lenoir, Gregory
Martin, Michael G.
McFann, Randy C.
McGinnis, James W.
McLean, Daniel J.
Meek, Ralph E.
Melchior, II, Karl W.
Morgan, Kenneth D.
Navarro, Antonio
Norris, Mickie D.
Otto, Jr., Robert L.
Payne, Kenneth
Pierce, Carl R.
Pitchford, David K.
Poole, Carl R.
Poore, Todd D.
Powell, Allen L.
Ramirez, Alfonso S.

Rayle, William D.
Redman, Mark A.
Reformo, Mark A.
Richardson, Ted E.
Ries, Richard A.
Ries, Ronald A.
Ritchie, Gary A.
Rose, Randall A.
Schaffer, Ernest E.
Scheffler, Steven E.
Seedorf, Kevin L.
Simpson, Thomas S.
Smith, Bernard R.
Smith, Gary C.
Sorah, Charles E.
Taylor, Bennett L.
Tennille, Kenneth B.
Valicenti, Perry L.
Wallace, Jr., John E.
Warrior, John E.
Wesley, Linard P.
Williams, Mark E.
Wilson, Sheldon D.
Wright, Sr., Arthur C.
Wyatt, Gerald A.
Young, David A.
Young, Robert E.
Ziegler, Kent E."

FINDINGS:

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

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

Claimant S. K. Pollock is employed as a machine operator by Carrier in its track sub-department; the other 97 Claimants are employed as trackmen in the track sub-department. On December 4, 1982, all Claimants were on furlough status. On that date, a derailment occurred near Quincy, Ohio. Carrier assigned its track subdepartment forces to perform repair work at the derailment site, then used an outside concern to assist those forces. The Organization thereafter filed a claim on Claimants' behalf, challenging Carrier's use of outside forces instead of recalling furloughed employees.

This Board has reviewed the record in this case, and we find that the Organization has not met the burden of proof required to demonstrate that the Carrier violated the Agreement by subcontracting out the work in question after the derailment on December 4, 1982. Hence, this claim must be denied.

It is true, as the Organization argues, that the work performed was work which is ordinarily considered Maintenance of Way work. However, given the emergency situation and the fact that the Carrier was in need of equipment and men to operate that equipment which it did not have within its own forces, the Carrier acted within its rights by bringing in the subcontractor for the short emergency work. Given the fact that the Carrier needed backhoe and bulldozer work performed in this emergency situation, and given the qualifications of its furloughed employees, this Board cannot find that the Carrier violated the Agreement by its actions in this case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of July 1988.