

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Kansas City Southern Railway Company

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

(1) The Agreement was violated when the Carrier assigned outside forces (Bolser Services Company) to transport track materials and repair road crossings at track #500 and track #030 in Kansas city, Kansas on August 20 and 21, 1987 [Carrier's File 013.31-320(247)].

(2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it failed to furnish the General Chairman with advance written notice of its intention to contract out said work.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants D. Lopez, J. Candillo, R. Green, B. Shrout, B. Cooper, T. O'Donnell, F. Aguilera, A. Guzman, B. Rhodes, L. Williamson, S. Terrazas, J. Williams, H. Drone, M. Irwin, G. Guiterrez and R. Candillo shall each be allowed sixteen (16) hours of pay at their respective straight time rates."

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 employees 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.

There are two elements of work involved in this Claim. One is the transporting of ties from a storage point to the point of use. The other is the use of a contractor's backhoe and operator to assist a crew working on a road crossing.

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Award No. 29385
Docket No. MW-29164
92-3-90-3-19

This Board is of the view that transporting of Company material from one location to another is work which the Organization cannot claim is theirs under the Agreement. In Third Division Award 29252 the Board concluded that handling of Company material was work that all classes of Carrier employees performed over the years. Accordingly, that aspect of this Claim is denied.

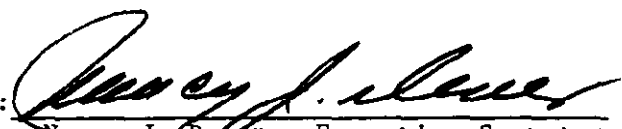
With respect to use of a contractor's equipment and forces assisting Carrier's maintenance forces on grade crossing renewal, the Board has previously held that notice must be given under Article IV of the May 17, 1968 National Agreement. See Third Division Award 29253. Accordingly, it is necessary to hold that the Agreement was violated when notice was not given. This Claim, is a contemporary claim to that involved in Award 29253, the violation here occurred on August 20, 1987, with the violation in Award 29253 occurring on November 11, 1987. Thus, the rationale in the last two paragraphs of the Findings in Award 29253 will be followed.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deper - Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1992.