

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29439
Docket No. MW-29033
92-3-89-3-464

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

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

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

(1) The Carrier violated the Agreement when it assigned or otherwise permitted Outside Forces (Railway Construction Company) to perform track maintenance work (renew ties, raise track and dress track) on Terminal Elevator Track Nos. 3, 4, 7 and 8 in the East Kansas City Yard from August 17 through September 11, 1987 [Carrier's File 013.31-320(249)].

(2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it did not give the General Chairman advance written notice of its intention to contract said work.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Messrs. D. Lopez, J. J. Candillo, B. Cooper and R. Candillo shall each be allowed one hundred sixty (160) hours of pay at their respective 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 employee 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.

This Claim concerns work performed on terminal elevator tracks in the East Kansas City Yard by other than Maintenance of Way employees. The record demonstrates that work on these tracks is the responsibility of the lessee (Kansas City Terminal Elevator Company). Rules as to reservation of work to Maintenance of Way employees are clearly not applicable where the Carrier has no control over the work. Since the Organization cannot defeat this basic principle in this instance, there is no basis for the Claim.

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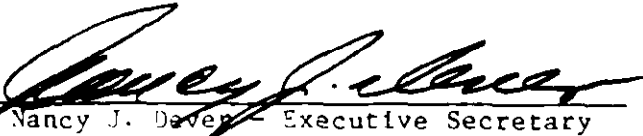
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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Davenport - Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1992.