

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29440
Docket No. MW-29034
92-3-89-3-456

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
(Soo Line Railroad Company (former Chicago, Milwaukee,
(St. Paul and Pacific Railroad Company)

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

(1) The Agreement was violated when the Carrier assigned or otherwise permitted outside forces (Maroszak Construction Company) to perform concrete work in connection with installing a new grade crossing at Glendale Yard on the North Milwaukee line on May 12, 13, 16, 17, 20 and 23, 1988 (System File C #16-88/800-46-B-311 CMP).

(2) The Carrier also violated Article IV of the National Agreement of May 17, 1968 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, 883 employees J. T. Ingham, T. J. Rueda, G. L. Wieting, D. M. Wild, G. A. Prell, C. R. Bath, K. K. Popp, L. J. Budahn, R. C. Brown and R. W. Hansen, Jr. shall each be allowed pay at their respective rates for an equal proportionate share of the total number of man-hours expended by outside forces performing the work identified in Part (1) above."

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 employes 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.

This Claim concerns performance of concrete work on the Carrier's property in connection with a new track crossing. The work was in connection with a road requested and financed by and for the exclusive use of a Carrier patron. Carrier forces did perform some of the work in construction of the

crossing, but this was at the expense of the outside company. The Carrier did not engage any contractors for the work, as this was handled directly by the A. O. Smith Company. The Carrier received no benefit from the resulting track crossing, other than obliging one of its patrons for whose exclusive use it was constructed.

The Organization has failed to demonstrate that the Carrier undertook any contracting work or that the work in question was for its use or benefit. As a result, there is no showing of Rule violation. Discussion as to concrete work which may be performed by Carrier forces or whether or not there is Rule support to reserve such work to Maintenance of Way employees is not in point here. Where the Carrier has no control of the work and where it is of no benefit to the Carrier (and, indeed, is not at the Carrier's initiative), Awards have repeatedly determined that Carrier forces are not improperly denied the opportunity to perform such work.

Directly in point here is Third Division Award 28941 under closely similar circumstances.

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 21st day of October 1992.