

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30825
Docket No. MW-30220
95-3-91-3-675

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 Employes
(
(Terminal Railroad Association of St. Louis

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

(1) The Carrier violated the Agreement when it assigned or otherwise allowed outside forces (Oberkramer Construction Company) to perform digging work with a backhoe at Track No. 56 on November 4, 1990. (System File 1990-029/013-293-16).

(2) The Agreement was further violated when the Carrier failed to notify and discuss with the General Chairman its intention to contract out said work as required by Article IV and the December 11, 1981 Letter of Agreement.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Large Machine Operator R. Glenn shall be allowed two (2) hours and forty (40) minutes' pay at his time and one-half rate."

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 employee 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.

As a Third Party at Interest, the Brotherhood of Railroad Signalmen was advised of this dispute and submitted a response.

On August 13, 1990, the Carrier notified the General Chairman of its intention "to contract a portion of the new construction of track work for the project of by-passing the U.D. Connection Bridge and the removal of the abandoned bridge". Conference was requested and held concerning this project.

On November 4, 1990, a backhoe operated by an contractor's employee was employed to excavate a ditch, permitting the Signal Department to bury cable. This was apparently in relation to the project discussed on August 29, 1990, although it obviously was not specifically referenced in the notice.

There is dispute as to whether this work can properly be claimed by Maintenance of Way forces or is work regularly performed by Signalmen forces. The Board need not resolve this issue, since other factors make this resolution unnecessary. The Carrier stated during the claim handling process that the work here under review was performed at the direction of the Union Pacific Railroad, which was fully involved with the Carrier in the project, and that the contract work was undertaken by the UP. The Board is not presented with convincing evidence that this work was improperly under UP control rather than under the Carrier's control. On this basis, the Carrier cannot be found in violation of obligations under the Agreement as to its own rights to contract work.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 27th day of April 1995.