

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30828  
Docket No. MW-30226  
95-3-91-3-683

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  
(  
(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 outside forces (Kamadulski Contracting Company) to perform roadbed construction work near Gratiot Street in St. Louis, Missouri, in connection with the Union Depot track relocation project on September 4, 5, 6, 7, 10, 13, 14, 17, 19, 20, 21, 24, 25, 26, 27, and 28, 1990. System File 1991-22/013-293-14).

(2) The Carrier violated the Agreement when it assigned outside forces (Merit Construction Company) to perform track construction work at Gratiot Street in St. Louis, Missouri, in connection with the Union Depot track relocation project beginning September 17 through November 2, 1990. System File 1990-28/013-293-14).

(3) As a consequence of the violation referred to in Part (1) above, Large Machine Operators R. Gray, D. Stogner, R. Gower and R. Glenn shall each, in accordance with their seniority, be allowed ten (10) hours' pay at their applicable rate for each work day, September 4, 5, 6, 7, 10, 13, 14, 17, 19, 20, 21, 24, 25, 26, 27, and 28, 1990, the above described work was performed.

(4) As a consequence of the violation referred to in Part (2) above, Foreman R. Gartner, Large Machine Operators J. West and R. Gower, Truck Operators R. Jackson, D. Schindler and O. Rodriguez and Track Laborer M. Johnson shall each be allowed pay at their respective rates for an equal proportionate share of the total number of man hours expended by the outside forces performing the above described work, retroactive sixty (60) days from November 29, 1990."

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.

The Carrier argues that the first claim set forth above should be dismissed on procedural grounds because of the Organization's failure to notify the Carrier's representative of its rejection of the reply of the Director, Labor Relations and Personnel within 60 days, as provided in Rule 42 (b). Rule 42 (c) provides, however, that this requirement does not apply "in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes". The Board finds no basis for procedural dismissal of the Claim.

On August 13, 1990, the Carrier wrote to the General Chairman in pertinent part as follows:

"Please be advised the Carrier intends 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. The new track to be constructed will extend from Gratiot Street Interlock to 14th Street Interlock, across an open field not connected to the operating railroad.

[Carrier] Track forces will be working on this project. The magnitude of the project requires that all areas of the project proceed simultaneously beyond the capacity of our supervision, manpower and equipment.

After the new track is placed in service and the present U.D. Connection Bridge is abandoned, it will be sold in place for scrapping.

No Track or Bridge employees represented by BMW are furloughed."

Conference was requested and held, and the Carrier proceeded with the project. At issue here, as stated by the Organization, is the Carrier's use of contract forces to "perform basic track construction work on the Gratiot Street track relocation project" and certain track construction work at Gratiot Street.

As to the use of machines by a contractor in the first cited instance, the Carrier advised the Organization during the claim handling process as follows:

"On the dates claimed, all large machine operators were fully employed, operating Company owned equipment and working overtime. This project required additional equipment which the Carrier does not own. The contractor worked on building a new road bed not connected to the operating railroad. At the completion of the extra new construction work, the contractor was released. The connections were made by Carrier employees."

As to the second claim, the Carrier advised as follows:

". . . six (6) additional Track employees were hired; no BMW employees were furloughed; and Track employees were worked excessive overtime to accomplish this project, in addition to extra help by outside contract forces supplementing supervision, labor and equipment."

The Board finds no convincing refutation to these accounts. While the work involved is such regularly performed by Maintenance of Way forces, the fact remains that the Carrier advised the Organization of its intentions; made the fullest use of all available employees, including additions to the force; did not have its own equipment available to cover all of the work; and was working under time constraints to complete the overall project. In these circumstances, the Board concludes that some contracting was unavoidable and that Carrier forces would not have been available within the required time and thus were not deprived of work.

AWARD

Claim denied.

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O R D E R

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.