

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31926
Docket No. MW-31501
97-3-93-3-505**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former
(Missouri Pacific Railroad Company)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned outside forces (Track Work, Inc.) to retire, relocate and reconstruct portions of the main line and yard tracks in the vicinity of 25th (Roosevelt Road) and Bond Street, Mile Posts 349.7 to 350.1, beginning May 10, 1992 and continuing.

(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, Arkansas Division employees P. L. Jackson, Jr., W. D. Stanley, D. W. Burrows, J. M. Holland, C. H. Burrows, F. Barber, Jr., T. G. Thornberry, S. W. Harness, V. D. Randolph, J. C. Dickerson, R. D. Bratton, M. W. Ward, R. E. Rouse and L. P. Burks shall each be allowed pay at their respective time and one-half rates for all wage loss suffered beginning May 10, 1992 and continuing."

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 were given due notice of hearing thereon.

The claim alleges that Carrier improperly contracted out the performance of reserved track work on Carrier's property. Carrier defends on the basis that the disputed work was not its work. Carrier also alleged that Claimants were fully employed.

The disputed work was made necessary by an airplane crash at the adjacent Little Rock Airport. The Federal Government's post-crash investigation recommended that runway 36/18 be lengthened. This required a relocation of a portion of Carrier's trackage lying within the area of the proposed runway extension. According to the Carrier, the Federal Aviation Administration ("FAA") constructed and paid for a "shoo-fly" type of track configuration on airport land, not on Carrier property, to permit the extension. After completion of the construction, the airport and Carrier swapped land.

It is undisputed in the record that the FAA also paid for pre-fabricated switches and track panels assembled by and transported to the construction site by Carrier forces. The FAA also apparently paid for some signal installation work by Carrier forces.

The Organization objected to much of the contents of Carrier's Submission as being new material. Having done so, however, the Organization asked this Board to consider, in support of the claim, certain information contained in Carrier Exhibit J, which was part of the objectionable material.

In reviewing the Carrier's Submission, we find most of the Organization's objections to be soundly based. It is well settled that information and argument not presented by the parties during their handling of the claim on the property may not be

considered for the first time by this Board. Consequently, we have not considered any new material in Carrier's Submission for any reason.

After careful review of this record, we find that the disputed work was not the Carrier's work. There is no evidence that the work was done on property owned or leased by Carrier or that Carrier was responsible for or in control of the work. The fact that Carrier may have sold labor and materials to the project does not alter this finding according to this record. As a result, we find the provisions in the effective Agreement regarding the contracting of scope covered work did not apply to the facts at hand and, therefore, were not violated.

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 4th day of March 1997.