

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32125
Docket No. MW-31802
97-3-94-3-87**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Baltimore and
(Ohio 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 to perform Bridge and Building Sub-department work (scrapping, preparing and painting storage tanks, above-ground piping and the fence around the oil separator building) at the Riverside Ready Track and Riverside Repair Shops in Baltimore, Maryland beginning September 14 through October 28, 1992 [System File B-TC-8954/12 (93-221) BOR].**
- (2) The Agreement was further violated when the Carrier failed to give the General Chairman advance written notice of its intent to contract out said work.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Messers. S. D. Cierkowski, C. E. Duvall, S. N. Hardy, D. A. Kraft, D. E. Beverly, M. L. Hare and M. L. Marshall shall each be allowed pay at their respective rates of pay for an equal proportionate share of the eleven hundred twenty (1,120) man-hours expended by the outside forces in the performance of the subject work.”**

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.

Without prior notice to the Organization, during the period September 14, 1992 through October 28, 1992, the Carrier utilized a contractor to scrape, prepare and paint the large above-ground storage tanks at Riverside Repair Shops in Baltimore. Additionally, the contractor was used to paint the above-ground piping and bridge systems at the Ready Track and paint the fence that surrounds the oil separator building.

Rule 1(c) states:

“(c) Bridge, Building and structural work.

Carpentry, painting, glazing, tinning, roofing, plastering, bricklaying, paving, masonry and concreting required in the construction and maintenance of railroad structures, other than tunnels, shall be performed by the B&B forces.

* * *

Addendum 13 of the December 11, 1991 Letter of Agreement states:

“* * *

1. In the event the Carrier decides that in light of the criteria specified in Paragraph (b)5. (a) of the Scope Rule of the Schedule Agreement it is necessary to contract work of a type currently performed by the employees coming under the Scheduled Maintenance of Way Agreement, it shall give the General Chairman notice of intent to contract and the reasons therefore, together with supporting data. ...”

The work in dispute was clearly scope covered. There is no evidence in this record that the Carrier gave the Organization prior notice of an intent to use a contractor. We therefore find that the Carrier contracted out scope covered work and failed to give the Organization the required prior notice. The Organization has therefore established a violation of the Agreement.

With respect to the remedy, Claimants shall be made whole. The fact that Claimants were employed at the time the contractor performed the work in this case does not extinguish their right to relief. Claimants lost work opportunities as a result of the Carrier's violation of the Agreement. However, it appears that some of the hours claimed have been previously paid as a result of a prior settlement. There is no evidence—e.g., a settlement agreement or exchange of correspondence or the like—in this record to show that the prior settlement disposed of all of this dispute. Those previously paid hours shall be offset against Claimants' entitlements under this Award.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of August 1997.