

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32265
Docket No. MW-31412
97-3-92-3-882**

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(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 (Schwartz and Sons) to perform B&B Subdepartment work (asphalting road crossings) at Baker Street, Tudor Avenue, McCausland, South Bend Road, Eagle Park Road, Lynch Street, St. Clair Avenue, 15th and Lincoln, Ridge Avenue and St. Louis Avenue on the Illinois Transfer between East St. Louis to Madison, Illinois from August 12 through 23, 1991 (System File 1991-11/013-293-17).**
- (2) The Agreement was violated when the Carrier assigned or otherwise allowed Norfolk and Southern tie gang forces to perform track maintenance work (replacing ties) on the Illinois Transfer between East St. Louis, Illinois to the Merchants Bridge in St. Louis, Missouri from August 28 through September 12, 1991 (System File 1991-12/013-293-16).**
- (3) The Agreement was violated when the Carrier assigned or otherwise allowed Norfolk and Southern rail and surfacing gang forces to perform track maintenance work (unloading and laying welded rail) on the Illinois Transfer between East St. Louis, Illinois to the Merchants Bridge in St. Louis, Missouri from November 5 through 21, 1991 (System File 1991-21/013-293-14).**

- (4) The Agreement was further violated when the Carrier failed to properly notify and discuss with the General Chairman its intent to contract out said work as required by Article IV of the 1968 National Agreement.
- (5) As a consequence of the violations referred to in Parts (1) and/or (4) above, [five] B&B employees shall each be allowed three (3) hours' pay at their respective hourly rates for each date the outside forces performed the B&B Subdepartment road crossing work.
- (6) As a consequence of the violations referred to in Parts (2) and/or (4) above, [41] Claimants shall each be allowed pay at their respective rates of pay for an equal proportionate share of the total number of man-hours expended by the Norfolk and Southern tie gang forces in the performance of the tie renewal work on the dates in question.
- (7) As a consequence of the violations referred to in Parts (3) and/or (4) above, [62] Claimants shall each be allowed pay at their respective rates of pay for an equal proportionate share of the total number of man-hours expended by the Norfolk and Southern rail and surfacing gang forces in the performance of the unloading and laying of rail and the surfacing work on the dates in question."

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.

This matter consists of three separate claims, combined for the Board's review, concerning work performed by an outside contractor in one instance and by employees of another Carrier in the other two instances.

The type of work and arguments set forth by the Organization are virtually identical to those advanced in the dispute resulting in Third Division Award 31348, involving the same parties. In that Award, the Board found no exception to the reasons set forth by the Carrier to justify the necessity of contracting the work instead of utilizing its own forces.

In this instance, there is no question that the proper advance notice was given by the Carrier, and a resulting conference was held as requested by the Organization.

The Board finds the reasoning in Award 31348 should be and is determinative here. There is no basis to distinguish the facts from those considered earlier.

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 7th day of October 1997.