

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32317
Docket No. MW-31624
97-3-93-3-637**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned eight (8) employes of Brickl Brothers to build a loading ramp and erect a pole building on Carrier property at LaCrosse, Wisconsin beginning August 24 through October 15, 1992 (System File C-92-C100-52/MWA 92-12-22F).**
- (2) The Agreement was further violated when the Carrier failed to give the General Chairman advance written notice of its plans to contract out the afore-described work, as stipulated in the Note to Rule 55.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Bridge and Building Foreman J. M. Haas, Bridge and Building Truck Driver M. V. Anderson, Bridge and Building Mechanics C. R. Steele, R. I. Larocque, D. K. Hill, R. A. Krzyzaniak, Dump Truck Driver L. R. Flottmeier and Group 2 Machine Operator R. H. Hoium shall each be allowed pay for all straight time and overtime hours worked by the outside contractor from August 24 through October 15, 1992 at their respective rates of pay."**

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 claim arose when the Carrier allegedly assigned an outside contractor to build a loading ramp and erect a pole building at LaCrosse, Wisconsin beginning August 24 and continuing through October 15, 1992. The Organization contends that the type of work involved here is typical of the work that has customarily, historically and traditionally been performed by the Maintenance of Way forces. The Claimants were willing and able to perform the work in question. Furthermore, the Organization alleges that the Carrier did not give the General Chairman 15 days' written notice of its intent to use an outside contractor as it is required by the Rules.

The Carrier denied the claim contending that it did not hire the outside contractor to perform the work in question. The LaCrosse property at question is leased to Reload, Inc. who, at its own expense, hired the contractor. The Carrier argues that Reload, Inc. has exclusive possession of the LaCrosse property and is authorized by the lease to construct structures and make improvements relative to its lumber business.

The parties being unable to resolve the issues at hand, this matter came before this Board.

This Board has reviewed the record in this case, and although, we agree with the Organization that the work that was performed here took place before the contract was entered into, the Carrier has provided sufficient evidence that the work that was

performed by the subcontractors was in preparation for the work that would be performed under the lease. The record reveals that the Carrier was in the process of leasing the property to Reload, Inc. The lease was to be a seven-year agreement which was executed on July 21, 1992. The lease was to begin on November 1, 1992.

The Organization has shown that eight employees of a subcontractor named Brickl Brothers built a loading ramp and erected a pole building on Carrier property during the period August 24 through October 15, 1992. That was before the lease went into effect. Normally, this Board would find that the Organization members who were employed by the Carrier had to be used for that type of work since it was work that was customarily performed by Organization members who were employed by the Carrier.

However, a review of the lease shows that it is dated on July 21, 1992, and originally was to go into effect on August 1, 1992. In addition, the work that was performed by Brickl Brothers was obviously undertaken to support Reload Inc.'s lumber storage business on the LaCrosse property. The Carrier allowed Reload to arrange for that work to take place before commencing its actual tenancy so that the property would be able to be used by Reload for its purposes on the date that the lease went into effect.

The work that was performed was not in connection with any railroad operations, and therefore, was not covered by the Collective Bargaining Agreement between the Organization and the Carrier. The work was done by Brickl Brothers solely for the benefit of Reload Inc. and at Reload Inc.'s expense.

Since the Organization has been unable to show that the Carrier violated the Agreement, this Board must find that the claim be denied.

AWARD

Claim denied.

Form 1
Page 4

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Docket No. MW-31624
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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 13th day of November 1997.