

Award No. 32319
Docket No. MW-31627
97-3-93-3-630

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 (former**
(**St. Louis-San Francisco Railway Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Trac-Works, Inc.) to perform routine track construction work building the Hickman Spur on the north side of the Armoral Branch Line at Armoral, Arkansas beginning June 24, 1991 and continuing (System File B-1941-1-8MWC 91-09-06A SLF).**
- (2) The Agreement was further violated when the Carrier 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, Track Subdepartment employees J. Brown, J. M. Angel, N. E. Russell, L. H. Wilson, E. W. Clark, G. L. Pate, M. A. Howard, D. W. Russell, W. M. Brown, J. L. Jackson, J. O. Key, E. C. Bragg, D. Brackin, T. Yates, A. Bledsoe, N. L. Breshears, J. George, C. S. Newson, F. L. Hampton, C. H. Aikens, R. Abmeyer, F. Howell, C. A. Collier and J. E. Ferguson shall each be compensated at their respective rates of pay for an equal proportionate share of the total number of man-hours expended by the outside forces in the performance of the above-described 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.

The Organization filed the instant claim arguing that building construction work of this nature has customarily, historically and traditionally been assigned to and performed by employees of the Track Subdepartment. The Organization also contended that the Claimants were willing and able to perform the work in question had they been offered the opportunity to do so. Furthermore, the Organization argues that the Carrier violated the Agreement by not giving proper advance notice of its intent to hire an outside contractor.

The Carrier denied the claim contending that the track known as the Hickman Spur is owned by Nucor Steel Corporation and the hiring of Trac-Works, Inc. was done solely by Nucor and not by the Carrier. The Carrier sold some rail, ties, rail anchors, spikes, ballast, welding services and other work related to the construction of the track to Nucor Steel but in no way was the Carrier involved in the hiring of a subcontractor.

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 we find that the Organization has not met its burden of proof that the Carrier violated any section of the Agreement. The record reveals that the Nucor Steel Plant contracted for the construction of the Spur to facilitate its new plant. The Carrier did not contract with Trac-Works, Inc. Consequently, no notice was required.

The record further reveals that Nucor owns the property involved and very little of the property could be considered Carrier property.

Since the Organization has not provided sufficient evidence to show that the Carrier subcontracted the work involved or that the Carrier had control over the property, this claim must be denied.

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 13th day of November 1997.