

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33478
Docket No. MW-32468
99-3-95-3-283**

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

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Soo Line Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned or otherwise allowed an outside concern (H&R Construction Company) to perform the routine Maintenance of Way work of installing crossbuck posts and signs at railroad crossings on the Carrier’s right of way between Mile Posts 136 and 195.4 on the Detroit Lakes Subdivision beginning July 12 through 22, 1993 (System File R730/8-00143).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of the intention to contract out said work and deprived him of the opportunity to discuss the matters relating to the contracting transaction as required by Rule 1.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Foreman D. W. Haara and Assistant Foreman A. G. Kohlgraf shall each be allowed ninety-eight (98) hours’ pay at their respective straight time rates and all overtime with proper credit for vacation and fringe benefits lost.”**

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.

On July 20, 1990, Carrier notified the Organization that the State of Minnesota was proposing to improve public grade crossings statewide. On August 21, 1990, a conference was held regarding the subject of the notice. In April 1992 Carrier entered into an agreement with the State of Minnesota regarding the grade crossing improvements. The instant claim concerns the installation of crossbuck posts and signs at 49 roadway crossings between July 12 and July 22, 1993.

The Organization contends that the work involved was work historically and customarily performed by maintenance of way forces. It maintains that Carrier violated the Agreement by failing to give notice of its intent to contract out the work and by contracting out the work. Carrier responds that the work was not historically and customarily performed by the employees and that it did not contract out the work. Rather, the decision to use a contractor was made by the State of Minnesota. The Organization responds that Carrier had the authority under its agreement with the State of Minnesota to have its own forces perform the work.

In its Submission, the Organization observed, "[T]he same basic arguments presented by the Organization in the case currently before this Division as Docket No. 31918 also apply in the instant dispute." Docket 31918 also involved the installation of crossbuck posts and signs. Docket 31918 was resolved by Third Division Award 32351. This Board denied the claim because the Organization failed to carry its burden of proof. The Board stated:

"The burden of proof for the instant claim belongs to the employees. They must initially demonstrate that the work herein contested belongs to the employees and is encompassed by the Scope of the Agreement We have carefully reviewed the Rules and record. We find no proof in any form that would constitute the requisite burden. Even the statements from

employees do not attest to the instant work belonging to the craft or performed thereby. . . .”

The record in the instant case is similarly devoid of proof that the work at issue has historically and customarily been performed by the employees. The only evidence presented consisted of copies of time rolls for the second half of September 1992, first half of October 1992 and second half of April 1993; and materials reports from August through October 1992. Carrier responded that a few time rolls showing repairs to signs or securing of signs or posts do not establish a historical, customary or traditional practice of employee performance of the work. We agree. Accordingly, as with the claim in Award 32351, the instant 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 22nd day of September 1999.