

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33480
Docket No. MW-32471
99-3-95-3-379**

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 (former Chicago, Milwaukee,
(St. Paul and Pacific 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 (L. Baker Construction, also known as Key Associates) to perform recognized Maintenance of Way work (cleaned small amounts of coal and trash from the Carrier’s coal cars at Mile Post 204.3 of the No. 3 East Lotta Yard track on March 15, 16, 17, 18, and 21, 1994 (System File C-07-94-C080-02/8-00198 CMP).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intention to contract the work described in Part (1) above, as required by Rule 1.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Messrs. J. P. Richards, F. D. Caddell and J. L. Borders shall each be allowed a proportionate amount of pay for eighty-three and one-half (83 ½) hours at their respective time and one-half rates for all time and wage loss suffered as a result of Carrier’s assigning outside forces to perform the work described in Part (1) above on March 15, 16, 17, 18 and 21, 1994.”**

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 instant claim involves Carrier's contracting out the work of cleaning small amounts of coal and trash from Carrier's coal cars without first giving notice of its intent to do so. The instant claim is identical in all relevant respects to the claim before the Board in Third Division Award 32703. In Award 32703, the Board concluded that the Organization had failed to show that the work of cleaning small amounts of coal and snow from Carrier's coal cars was reserved to its members. The Board also held that Carrier violated the Agreement by failing to give notice of its intent to contract out the work. However, the Board awarded no monetary relief because the subcontracting at issue had occurred two months prior to issuance of Third Division Award 29547 which "had pointedly directed Carrier to serve notice to the Organization in the future before subcontracting as mandated by Appendix I"

We observe that a strong argument has been made that the conclusion in Award 32703 that the cleaning of small amounts of coal from Carrier's coal cars was not traditionally and historically performed by the employees is erroneous. However, we need not reach that issue because it is clear that Carrier violated the Agreement by its failure to give notice. Unlike Award 32703, the instant case arose after issuance of Award 29547. Accordingly, we find that an award of monetary relief is appropriate for the Carrier's failure to give notice of its intent to subcontract. See Third Division Award 32704.

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AWARD

Claim sustained.

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 22nd day of September 1999.