

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 36017  
Docket No. MW-33829  
02-3-97-3-320**

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

**PARTIES TO DISPUTE:** ( **(Brotherhood of Maintenance of Way Employees**  
**(Soo Line 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 (Wisconsin Central Ltd.) to perform Maintenance of Way work (switch renewal, rail replacement, tie installation, track surfacing and other related track maintenance) in the Schiller Park Yard beginning October 9, 1995 and continuing (System File R1.055/8-00260).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intent to contract out said work as required by Rule 1.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, each Claimant\* listed below “. . . and any Soo Line employe who subsequent to October 9, 1995 displaces onto the Schiller Park Section Crew to the Schiller Park Extra Gang, shall now (sic) reimbursed for the equivalent of proportional share of the total man hours of service provided by the WCL employes on the Schiller Park tracks beginning October 9, 1995 and continuing until such time as this violative work assignment is correctly assigned to our members. Such proportional share shall be paid to the Claimants at their respective rates of pay and they shall have all overtime, vacation, fringe benefits. and other rights restored which were lost to them as a result of the above violation.**

**\*J. Martinez  
P. Rodriguez  
R. McCumber  
D. Schewe  
J. Valdez  
A. Barajas  
J. Vieyra**

**J. Morales  
L. Camacho  
R. Severson  
D. Beyer  
S. Dziengel  
R. Quintero  
J. Flores”**

**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 track work at issue was performed by Wisconsin Central employees on track leased by the Carrier to Wisconsin Central.

The Carrier explained the reasons for the lease:

“ . . . The lease was entered into as part a larger transaction. It was being negotiated by CP, WCL [Wisconsin Central] and METRA. Transaction revolved around METRA's plan to institute commuter rail service on WCL's line of railroad between Franklin Park, IL, and Antioch, IL. As part of that operation, WCL's operation at Schiller Park would be permanently relocated to an alignment approximately that of the so-called “Gauntlet Track,” which is located along the westerly edge of the Yard. The Gauntlet Track is track currently used by WCL as its main track. In order to accommodate METRA passenger service, the Gauntlet Track would be updated and realigned. The upgraded and realigned Gauntlet Track would be used as a passenger main. WCL would be also constructing a second main track to be used for freight operations, parallel to and easterly of the realigned Gauntlet Track. In order to accommodate METRA, WCL would be making extensive changes to its facilities between Franklin Park and Antioch, including the construction of additional main track and sidings.

The purpose of the lease was to provide WCL with a track that could be used for main line operations, the staging of trains and the storage of equipment during the upgrading and realignment of the Gauntlet Track, the construction of the new WCL freight main and the other construction activities on WCL's property. This lease was demanded by WCL as a prerequisite for going forward. Under the lease, WCL leased two CP Tracks, 17 and 18. At WCL

insistence, WCL had to be given control over the management and operation of the two leased tracks during the terms of the lease.”

In Third Division Award 30965 we denied a similar claim:

“From what was developed on the property, the work performed by Brock Steel was done in furtherance of that company’s business under the confines of its authority pursuant to the lease and was not performed as part of normal railroad operations by the Carrier. As the facts were developed on the property, the Organization has not demonstrated that the lease arrangement was a subterfuge engaged in by Brock Steel and the Carrier to avoid the consequences of the Organization’s Agreement with the Carrier.”

Based on what is before us, the same conclusion is warranted in this case. The Organization has not carried its burden. The claim shall 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 21st day of May, 2002.