

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 36280  
Docket No. MW-35493  
02-3-99-3-401**

**The Third Division consisted of the regular members and in addition Referee Richard Mittenthal when award was rendered.**

**(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(Burlington Northern Santa Fe Railway  
( (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 (Gilbert Central) to perform Maintenance of Way work [using two (2) dozers, three (3) trackhoes, two (2) graders, two (2) rollers, two (2) dump trucks, one (1) water truck, two (2) foremen, four (4) laborers, two (2) mechanics] to construct a siding extension between Mile Post 385.82 and Mile Post 387.62 at Hogan, Arkansas beginning September 10, 1997 and continuing (System File B-2083-7/MWC 98-01-07AD SLF).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimants listed below shall now each be compensated at their respective rates of pay for an equal proportionate share of the total man-hours expended by the outside forces in the performance of the work in question.**

**D. J. Brewer  
W. L. Fish  
R. L. Chance  
E. Hoffman  
M. A. Hosiner  
G. A. Owens  
D. L. Edell  
J. R. Philpot**

**W. E. Bentsch  
D. L. Dail  
T. P. Lowder  
D. L. Crisp  
L. A. Reynolds  
D. J. Smith  
R. C. Graves  
J. D. Neece**

J. H. Holland  
J. M. Simpson

R. E. Haile  
J. S. Williams"

**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 Carrier advised the General Chairman on August 3, 1997, that it wished to contract out "the new construction of the extension of a siding between MP 385.82 and MP 387.62 at Hogan, Arkansas." It contemplated that the following work would be done by contractors: grading (85,000 cubic yards, compacted); seeding (3 acres); topsoil (7,000 cubic yards); subballast (10,900 cubic yards, compacted); fence installation (1,000 feet of ROW fence; bridge construction (a 100-foot long concrete "T" girder bridge); and various culvert extensions and crossings. It anticipated that the contractors would begin the job on August 20, 1997. Equally important, its notice called for BMW-represented employees to install 9,600 feet of new track including ties, ballast, surface, and two turnouts.**

**Discussions of the proposed contracting out were held between the parties. The Organization believed that much, perhaps all, of the "dirt work" should be done by Carrier employees rather than a contractor. It was referring apparently to the grading, subballast and other work in creating a foundation for the new siding extension. These discussions did not produce an agreement. The contractors, principally Gilbert Central, began work on this job in late August. The Organization grieved, alleging that the "dirt work" involved "fundamental and basic . . . track construction work" which had been "customarily assigned to and performed by Carrier employees." It stressed that its Special Equipment Operators and Truck Drivers were capable of manning all**

the equipment involved in the "dirt work" and that they, along with the Carrier's Foremen, Laborers and Mechanics, could do much larger portions of the project than they had been assigned to do. None of these arguments persuaded Management to alter its original plan.

The record in this case fails to establish that the type of work in question has been done exclusively by BMW-employees in the past. Such work no doubt has been assigned to employees on occasion, but it has been assigned as well to contractors. Given these circumstances, the Organization's claim is without merit.

**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 28th day of October 2002.**