

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37351
Docket No. MW-36941
05-3-01-3-503

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 Employes
(Union Pacific Railroad Company (former Chicago &
(North Western Transportation Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Burns Construction Company) to perform Maintenance of Way and Structures Department work (remove, form and pour a portion of the handicap ramp) at the West Chicago Station at Mile Post 29.5 on the Geneva Subdivision on June 5, 6 and 7, 2000, instead of Messrs. R. Wagner, E. Fleming, W. J. Borden, Jr. and J. D. Slivka (System File 9KB-6663T/1241773 CNW).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper advance written notice of its intent to contract out the above-referenced work or make a good-faith attempt to reach an understanding concerning such contracting as required by Rule 1(b).
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants R. Wagner, E. Fleming, W. J. Borden, Jr. and J. D. Slivka shall now each be compensated at their respective straight time rates of pay for an equal proportionate share of the one hundred eight (108) man-hours

expended by the outside forces in the performance of the aforesaid 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 Commuter Rail Division of the Regional Transportation Authority (METRA) provides service to Chicago commuters over the Carrier's rail lines. METRA is the owner of station improvements at the West Chicago station. METRA and the Carrier leased their respective ownership rights in the West Chicago station to the City of West Chicago, Illinois.

As it did when the handicap ramp was originally constructed at the West Chicago station, METRA contracted and paid for repair to that ramp. This claim followed with the Organization asserting that it was not notified of the contracting and scope covered employees should have performed the work.

The Carrier did not hire and pay the contractor to perform the repairs - METRA did. METRA clearly had the authority to do that. The claim therefore lacks merit. See Third Division Award 30947:

"The track upon which the contractor performed the work was under the control of the East Jersey Railroad pursuant to the terms of its lease with the Carrier. The lease made the East Jersey Railroad responsible for maintenance of the track. The Carrier did

not hire the contractor to perform the work. The work in dispute was therefore outside the scope of the Agreement. There is nothing in this record to show that the lease arrangement between the Carrier and the East Jersey Railroad was anything other than an arm's length transaction. The claim must therefore be denied. Third Division Awards 29439, 29601."

Third Division Award 30965 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."

Those Awards govern this dispute. 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 24th day of February 2005.