

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38149
Docket No. MW-37499
07-3-02-3-583

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(CP Rail System (former Delaware and Hudson
(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 to perform Maintenance of Way work (plant and seed wetland areas) on the right of way between Mile Posts “A 123.3 and A 124.7 on the Canadian Main Line on July 18, 2001, instead of Mr. W. Barcomb (Carrier’s File 8-00212 DHR).**
- (2) The Agreement was further violated when the Carrier failed to comply with the advance notice requirements regarding its intent to contract out the aforesaid work or make a good faith effort to reduce the incidence of subcontracting and increase the use of its Maintenance of Way forces as required by Rule 1 and Appendix H.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant W. Barcomb shall now be compensated for eight (8) hours’ pay at his respective straight time rate of pay.”**

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.

By memorandum dated February 2, 2002, the Carrier notified the Organization's General Chairman of projects in the coming year that might potentially be contracted out. On March 14, 2001, the Carrier sent a letter to the General Chairman listing additional work that the Carrier planned to contract out. By letter dated March 20, 2001, the Organization responded to the Carrier's notices. In that letter the Organization made reference to discussions between the Parties regarding the work at issue. It also contended that the Carrier could lease the equipment and use BMW-represented employees to operate it, rather than have a contractor's employees operate the equipment. In a letter dated March 30, 2001, the Organization reiterated its position and noted that, despite discussions between the Parties, it opposed the Carrier's allowing other than BMW-represented employees to operate the equipment needed for the projects in question.

On August 13, 2001, the Organization filed the foregoing claim. It stated that the work at issue (planting and seeding) had previously been done by employees from the B&B Department. In its October 3, 2001 denial, the Carrier stated:

"This claim is for work that was identified in a previous contracting out letter from [Carrier] on February 2, 2001, identifying this work to be contracted out. . . . The work of seeding the wetland areas was an integral part of this grading work and was previously identified in the contracting out letters."

The Carrier also contended that the Organization had been properly notified in accordance with the Agreement between the parties.

After carefully reviewing the record, the Board concludes that the Carrier gave the Organization ample notice and opportunity for discussion before contracting out the work in question. Further, in the two initial claim letters from the Organization, it acknowledged that it had multiple discussions with the Carrier concerning the matter. While it is clear that the Organization did not agree with the Carrier's position and continued to disagree even after discussions between the Parties, there is no showing that the Carrier acted in other than good faith. Moreover, the Organization failed to prove that the work at issue was specifically reserved to BMW-represented employees. Therefore, we find that the Carrier did not violate the Agreement when it contracted out the work in this case.

Thus the claim is denied. (See also Third Division Awards 38150 and 38151).

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 23rd day of April 2007.