

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 39325  
Docket No. MW-37965  
08-3-NRAB-00003-030368  
(03-3-368)

The Third Division consisted of the regular members and in addition Referee Robert E. Peterson 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 (Stralow's Morrison Blacktop) to perform Maintenance of Way and Structures Department work (haul rubber material and breakup concrete header) at Route 9 crossing, Mile Post 86.7 on the Peoria Subdivision on May 13 and 14, 2002 instead of Mr. R. Boncouri. (System File 3KB-6786T/1327232 CNW)
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper 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, Claimant R. Boncouri shall now be compensated for sixteen (16) hours' pay at his respective time and one-half 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.

The Board is satisfied in overall study of the record that, as the Carrier states, the claim fails on fundamental burden of proof grounds in that it arises from a matter that involves not the Carrier, but the State of Illinois having contracted with Stralow's Morrison Blacktop to replace the asphalt of a Route 9 highway crossing for 30 feet on either side of the Carrier's tracks crossing Route 9.

Despite vigorous argument, we are not persuaded that the record supports the existence of any Rule or Agreement that requires the Carrier to use its Maintenance of Way forces to perform work that is incidental to a third party project, or, as here, a concrete header that was and is said to be property of the State of Illinois.

Under the circumstances of record, the Board finds that the disputed work was not under the control of the Carrier. We will, therefore, hold that there was no violation of Carrier Agreements with the Organization.

**AWARD**

Claim denied.

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**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 29th day of September 2008.