

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39861
Docket No. MW-38779
08-3-NRAB-00003-050182
(05-3-182)

The Third Division consisted of the regular members and in addition Referee Brian Clauss when award was rendered.

PARTIES TO DISPUTE: (BNSF Railway Company (former Burlington
(Northern Railroad Company)
(Brotherhood of Maintenance of Way Employees Division
(IBT Rail Conference

STATEMENT OF CLAIM:

“We are filing a continuing claim on behalf of Seniority District 200 Roadway Equipment Group 2 machine operators T. F. Roll, R. A. West, T. B. Rakes, T. O. Kinsey, R. J. Thilmony, M. V. Renner, L. R. Aichele, A. L. Johnson, N. H. Singer, R. P. Hecker and A. M. Schwindt, District 200 B&B Foreman S. Riehl, J. M. Sullivan and First Class Carpenters L. G. Belden, H. L. Doll, J. G. Beehler, District 200 Mobile B&B Crew Employees Foreman L. L. Waterson, Assistant Foreman L. D. Hofer, First Class Carpenters J. F. Siegel, T. Roma, R. L. Kellogg, L. P. Hibl, L. K. Roberts, Foreman D. D. Marchiando, First Class Carpenters D. O. Lode, C. T. Jordan, and J. L. Writht, Water Service Employees R. O. Barth #456505-7, T. J. Kreitingner #447986-1, and T. D. Jochim #457009-9 for a violation of the current Agreement between the Brotherhood of Maintenance of Way Employees and Burlington Northern Railroad beginning on May 10, 2000.

* * *

On claimed date, the Carrier hired subcontractors to perform work that is customarily performed by the Maintenance of Way. Beginning on May 10, and continuing, various outside contractors,

including but not limited to Chief Construction, Northwest Contracting, Jem Construction and Westcon were hired by the Carrier to perform construction of water and fuel lines in the Mandan Yard. Machine operators with crawler excavators, front end loaders and tractor backhoes are being used to install underground water and fuel lines in the Mandan Yard running from the east and west end fueling stations to the site of a new building under construction near the former roundhouse area. A total of eight men assisted by five machine operators are performing the work.

* * *

Because of this violation, we are requesting that Claimants receive an equal and proportionate share of all hours expensed by the outside contract forces performing the claimed work in the Mandan Yard, beginning May 10, and continuing until they are removed from the Carrier's right of way. Pay is to be at Claimants' respective rates of pay. Carrier File: 11 000387, Organization File: TD-2069-H."

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.

**Form 1
Page 3**

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There is no case before the Board because it was withdrawn by the party that initially filed the claim on the property. See Third Division Awards 30700 through 30714.

AWARD

Claim dismissed.

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 31st day of July 2009.