

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40454
Docket No. MW-40854
10-3-NRAB-00003-090125**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference
(
(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 (Railworks) to perform Maintenance of Way work (install ties) between Mile Posts 683 and 684 on the freight mainline at Laflin, Pennsylvania on October 10, 11, 12, 13, 14, and 15, 2006 (Carrier's File 8-00524 DHR).
- (2) The Agreement was further violated when the Carrier failed to comply with the 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 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, Claimants D. Kovaleski, A. Kovaleski, P. DeFazio and A. Thomas shall now each be compensated for thirty-two (32) hours at their respective straight time rates of pay and for twenty-eight (28) hours at their respective time and one-half rates 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.

This is a subcontracting claim filed under Rule 1 and Appendix H, protesting the Carrier's contracting of the installation of ties on the existing mainline track at Laflin, Pennsylvania, on six claim dates in October 2006. As was the situation in Third Division Award 40453, this case raises the issue of whether timely notice was served concerning this work and good faith discussions occurred prior to the commencement of the work in issue. Because it involves the same notice and conference as that discussed in Award 40453, the facts concerning the August 24 notice, the Organization's August 29 response and request for conference, the October 3 conference, and the Organization's October 11, 2006 correspondence are incorporated herein by reference.

The instant claim was filed on November 22, 2006 for all work performed by Railworks during the period of October 10 - 15, 2006 installing ties on the existing mainline track at Laflin, Pennsylvania. It sets out the number of hours of straight time and overtime work performed on each of the six claim dates. Most of the assertions and arguments set forth in the correspondence on the property in Award 40453 are similarly contained in the instant case record, and the Board's discussion of their contents are also incorporated herein by reference.

A careful review of the record convinces the Board that the Organization presented a prima facie violation of Rules 1.1, 1.4 and Appendix H. Rule 1.1 specifically reserves to BMWE-represented employees the work of maintenance of track. The installation of mainline ties falls squarely within the parameters of that reservation of work, and there can be no dispute that it is scope-covered. See Public Law Board No. 6493, Award 45. While the contracting notice specifically referred to the Laflin project and the construction of an industrial lead track, we are unable to agree with the Carrier that the August 24, 2006 notice encompassed the disputed installation of ties on the mainline. While the Carrier asserted that these ties were necessitated by switch work done and were needed to connect the new siding to the main line, the detailed description of the Laflin project in the notice says nothing about installing ties on the mainline or at the point where the siding, which presumably had not yet been

completed by October 10, 2006, meets the main line. However, even if we were to find that the original notice encompassed this work, for the reasons stated in Award 40453, we conclude that the October 3 conference did not satisfy the Carrier's obligation to discuss the Laflin project in good faith prior to the contract being signed and the work commencing. Thus we conclude that the Carrier violated both Rule 1.1 and Appendix H by contracting out the mainline tie installation work between October 10 and 15, 2006. See Public Law Board No. 6493, Award 44 and Third Division Award 36851.

Despite the fact that the Claimants were fully employed, in the absence of a specific challenge by the Carrier, there is no basis in this record to conclude that the amount of work involved did not encompass the hours listed on each claim date, or that the monetary remedy requested was excessive. See Third Division Awards 36851 and 37287. Accordingly, the claim will be sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 14th day of May 2010.