

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41474
Docket No. MW-40940
12-3-NRAB-00003-090240**

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

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(CP Rail System/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 (track construction) between Mile Posts 148.6 and 150.7 on the Canadian Main Line in Chesterfield, New York beginning on October 1, 2007 and continuing (Carrier’s File 8-00598 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 W. Barcomb, Sr., R. Lindsay and P. Jerdo shall now each be compensated for one hundred eighty-four (184) hours at their respective straight time rates of pay and for one hundred and twenty-six (126) hours at their respective time and one-half rates of pay, Claimants J. Reightmeyer, T. Aurilio, T. Vincelette and W. Pelkey shall now each be compensated for one hundred twenty (120) hours at their respective straight time rates of pay and for ninety (90) hours at their respective time and one-half rates of pay, Claimant K. Bigelow shall now be compensated for one hundred four (104) hours at his respective straight time**

rate of pay and for eighty-six (86) hours at his respective time and one-half rate of pay, Claimant E. Sawyer shall now be compensated for seventy-two (72) hours at his respective straight time rate of pay and for fifty-eight (58) hours at his respective time and one-half rate of pay, Claimant F. Lipka shall now be compensated for sixty-four (64) hours at his respective straight time rate of pay and for fifty-six (56) hours at his respective time and one-half rate of pay, Claimant J. Keable shall now be compensated for thirty-two (32) hours at his respective straight time rate of pay and for forty-eight (48) hours at his respective time and one-half rate of pay, Claimant K. Sweat shall be compensated for twenty-four (24) hours at his respective straight time rate of pay and for twenty-six (26) hours at his respective time and one-half rate of pay and Claimants D. Turner, W. Gadway and T. Conley shall now each be compensated for sixteen (16) hours at their respective straight time rates of pay and for twenty-four (24) 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 claim addresses the track construction portion of the Rockland Siding Project.

In Third Division Award 41446, the Board sustained the Organization’s companion claim concerning the excavation and grading portions of the Rockland Siding Project.

The instant claim and its issues are materially similar to, if not the mirror-image of, the claim and issues adjudicated by the Board in Award 41446. For the reasons set forth in detail in that Award, the instant claim is likewise 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 13th day of December 2012.