

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 41480  
Docket No. MW-41179  
12-3-NRAB-00003-100013**

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 welding) between Mile Posts 629 and 632 at New Milford, Pennsylvania beginning on October 29, 2007 and continuing through November 1, 2007 (Carrier’s File 8-00605 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 J. Smith, B. Gardner and M. Stone shall now each be compensated for one hundred forty-four (144) hours at their respective straight time rates of pay and for ninety-six (96) hours at their respective time and one-half rates of pay, Claimant F. Jefferson shall now be compensated for one hundred twenty (120) hours at his respective straight time rate of pay and for seventy (70) hours at his respective time and one-half rate of pay,**

Claimant P. DeFazio shall now be compensated for seventy-two (72) hours at his respective straight time rate of pay and for thirty-eight (38) hours at his respective time and one-half rate of pay, Claimant F. Konosky shall now be compensated for thirty-two (32) hours at his respective straight time rate of pay and for eight (8) hours at his respective time and one-half rate of pay and Claimant C. Gill shall now be compensated for twenty-four (24) hours at his respective straight time rate of pay and for sixteen (16) hours 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.

This proceeding involves a claim arising from the Carrier’s decision to contract out scope-covered work and the Organization’s allegations involving a violation of Rule 1 and Appendix H. This claim was processed on the property in the usual and customary manner up to and including the Carrier’s highest designated officer. A conference was convened on August 22, 2008.

On February 20, 2007, the Carrier issued the following notice to the Organization:

“Please be advised that under the provisions of the collective agreement the carrier intends to hire contractors to perform grading and construct 10,000 feet of track at New Milford Siding in

Pennsylvania. CPR forces will be installing the mainline turnouts. The grading work is scheduled to begin as soon as weather permits. The track construction is scheduled to start mid-April.”

In on-property Third Division Award 41420, the Board addressed this same notice, as well as the Organization’s claim, which was denied as to track construction.

On December 26, 2007, the Organization filed the claim in this proceeding:

“... for all time and work performed by the Railworks Corporation as well as any additional contractors performing the work of repairing and replacing defective welds on the newly constructed New Milford Siding in New Milford, Pennsylvania (approximately MP 629 to MP 632) on the Sunbury Subdivision.”

The Organization asserts that the Carrier failed to issue advance notice of its intent to contract in violation of Appendix H, as well as Rules 3, 4 and 11.

On February 5, 2008, the Carrier denied the claim as follows:

“... a contract is not complete until both parties are satisfied with the final results and that contracts regularly, and as a matter of routine, contain a warranty provision, implied or otherwise stated, whereby the Contractor shall correct, at its own expense, any defects in the work due to faulty materials and/or workmanship.

The welding as described in this claim was not in addition to the scope of the work as outlined in the Contracting Out Notice of February 20, 2007, but rather as a result of a warranty of a portion of the work performed. No additional contracts were issued and no addendums or amendments to existing contracts were required by the Carrier.

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When broken welds were discovered, the Carrier contacted the Contractor to effect repairs under warranty provisions, and at no additional cost to the Carrier.

During the inspection and subsequent remedy, a supplier to the Contractor was also on the property, for what was presumed to be warranty discussions between the Contractor and its Supplier, the Carrier is unaware of any welding training that took place.

The Contractor arrived on the property to remedy the defective welds. In order to affect all the repairs as quickly as possible, the mainline was remove from service for a time.”

The claim appeal, as well as the Carrier’s denial, reiterates arguments and assertions exchanged on the property.

In the Board’s view, there is no persuasive argument or probative evidence proffered by the Organization to support a deviation in application of the precedent in Third Division Awards 37905 and 31727 wherein the Board found, “[i]t is well-settled that warranty work is not covered by a Rules Agreement.”

Specifically:

“ . . . where the work is performed without cost to the Carrier and under the terms of its original equipment purchase, it can be readily established that the organization can point to no contractual provision requiring the Carrier to ignore such service.”

Followingprior Third Division Awards 37905 and 31727, and observing that there is no dispute that the claimed work is covered by warranty, the Board concludes that there are no violations of governing Rules as asserted by the Organization. Therefore, the claim is denied.

#### 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 13th day of December 2012.