

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30773
Docket No. MW-29997
95-3-91-3-394

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(CSX Transportation, Inc. (former
(Chesapeake and Ohio 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 (McKinnis Bros. Asphalt Co.) to perform track work (blacktopping 9 Mile Road crossing) in the vicinity of Novi, Michigan on September 2, 1988 [System File C-TC-4604/12(88-1199) CON].

(2) The Agreement was further violated when the Carrier failed to timely and properly discuss the matter with the General Chairman in good faith prior to contracting out said work as required by Article IV of the 1968 National Agreement and failed to make a good-faith effort to reduce the incidence of subcontracting in accordance with the 1981 National Agreement.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Foreman T. McLaughlin, Machine Operator M. Vasquez, Trackmen R. Ramirez, P. Siwik, A. Minicilli and J. Gurzick shall each be allowed an equal proportionate share of fifty (50) hours of pay at their respective pro rata rates."

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 waived right of appearance at hearing thereon.

This claim must be denied. The unrefuted evidence shows that the blacktopping in question was not contracted out by the Carrier. The City of Novi engaged the contractor and paid for having a rubberized crossing installed on the highway in question. There was no track work involved. The City of Novi paved its street, which included paving across the tracks, without disturbing the tracks in any manner.

AWARD

Claim denied.

O R D E R

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 6th day of April 1995.