

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30826
Docket No. MW-30221
95-3-91-3-676

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned or otherwise allowed outside forces to construct a road crossing over Carrier tracks between Gratiot Street Tower and 12th Street, in St. Louis, Missouri on December 7, 1990. (System File 1991-1/013-293-16).

(2) The Agreement was further violated when the Carrier failed to notify and discuss with the General Chairman its intention to contract out said work as required by Article IV and the December 11, 1981 Letter of Agreement.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Large Machine Operator J. West shall be allowed seven and one-half (7.5) hours' pay at his straight time rate."

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 is generally similar to that considered in Third Division Award 30825 involving work related to the U. D. Connection Bridge project. At issue here is the construction of a road crossing over Carrier tracks, which was carried out by Union Pacific Railroad employees and a contractor.

There is no doubt that work of this nature, if undertaken by the Carrier, is normally performed by Carrier forces. In this instance, however, the Organization had been notified of the involvement of UP in the overall project, for its own purposes and benefits.

As to the track crossing in question, the Carrier notified the General Chairman during the claim handling procedure as follows:

"The Union Pacific has a yard office opposite the new track constructed by [the Carrier] and a second track constructed by the UP. It was necessary for the Union Pacific to construct a private crossing across the new tracks to reach their yard office. The [Carrier] has no need for this crossing and has no interest in installing or maintaining it."

The Board is offered no evidence to contradict these assertions. While the construction was necessarily performed with the Carrier's knowledge and consent, it was not for its benefit nor did it serve the Carrier's needs. On this basis, the Board reaches the same conclusion as in Award 30825. Where work is under control of and for the benefit other than the Carrier, the Carrier cannot be required to meet Agreement restrictions as to its performance.

AWARD

Claim denied.

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 27th day of April 1995.