

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30829
Docket No. MW-30227
95-3-91-3-684

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
(
(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 outside forces (Hulcher Contracting Company) to install panelized switches at Gratiot Street in St. Louis, Missouri on September 29, October 2 and 3, 1990. System File 1990-26/013-293-14).

(2) The Agreement was further violated when the Carrier failed to properly 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, Foreman R. Gartner, Large Machine Operators R. Gower and D. Stogner and Track Laborers C. Wicks and C. Perry shall each be allowed sixteen (16) hours' pay at their respective straight time rates and eleven (11) hours' pay at their respective time and one-half 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 dispute concerns work involved in the major construction project reviewed in Third Division Award 30828, which is incorporated herein by reference. At issue here is the "installation of track switch panels" by forces employed by a contractor.

In defense of its action, the Carrier advised the Organization during the claim handling procedure as follows:

"All BMW representative employees, including the above claimants, were fully employed and working twelve (12) hours per day, seven (7) days per week. This contractor provided a side-boom cat that is not owned by [the Carrier], nor can the ownership of one be justified. Only one cat was used, with one operator"

The reasoning in Award 30828 is equally applicable here. There is no basis to find that the Claimants could have been utilized for this work, while simultaneously being assigned to the fullest extent on the same project.

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.