

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30942  
Docket No. MW-28116  
95-3-87-3-859

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 Employes  
(  
(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 permitted outside forces to install a new road crossing and timbers south of W. R. Tower in Granite City, Illinois, on October 27, 28 and 30, 1986 (System File 1986-14 T.R.R.A./013-293-14).
- (2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it did not give the General Chairman timely advance written notice of its intention to contract said work.
- (3) As a consequence of the aforesaid violations, Foreman R. Gartner, Machine Operator R. Gower, Truck Driver J. Mason and Track Laborers C. Perkins, R. Williams, M. Martin, S. Johnson and A. Dowiels shall each be allowed twenty-four (24) hours of pay at their respective straight time 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.

By letter dated October 27, 1986, the Carrier notified the Organization as follows:

"Granite City Steel Company plans to replace the existing private road crossing, across TRRA tracks at WR, in Granite City, Illinois. They will be the sole owner and use for their benefit only. Granite City Steel will construct the crossing with either their company employees or outside contractor, at their choice.

The TRRA will not participate in either construction, cost, or ownership of the crossing. This letter is sent as information."

Addressing the merits of the dispute, although Track Department Crews performed all track repairs at the crossing, the record shows that Granite City Steel Company rebuilt the crossing for that company's benefit with no participation in or cost expended by the Carrier. Nor was the work under the Carrier's control. Under those circumstances, the claim must be denied. See Third Division Award 23422 ("... [W]here the disputed work is not performed at the Carrier's instigation, not under its control, not performed at its expense and not exclusively for its benefit, the work may be contracted out ....").

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 29th day of June 1995.