

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31446
Docket No. MW-30675
96-3-92-3-403

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Soo Line Railroad Company (former Chicago,
(Milwaukee, St. Paul & Pacific Railroad
(Company)

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

(1) Claim on behalf of Larry L. Zwiefel and L. G. Pelischek for sixty (60) hours straight time each for lost work opportunity on April 15, 16, 17, 18, 19, 20, and 21, 1991, as a result of the Carrier's alleged utilizing an outside contractor, J&M Excavating, who possess no seniority or other contractual rights under the Maintenance of Way Agreement, Form 2625j to perform excavation and removal of cement foundations. Organization's File No. C-14-91-C080-04."

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.

The Claimants in this case hold seniority as Machine Operators.

On April 15 to 21, 1991, the Carrier hired an outside contractor to perform excavating work involving the removal of concrete platforms and foundations at Sparta, Wisconsin. The machines that were used to perform the work were a crawler backhoe crane, a dozer front-end loader, and two dump trucks.

The Organization filed a claim contending that the Carrier did not give the General Chairman advance written notice of its intention to subcontract the work in question. Furthermore, the Claimants were available and qualified to perform the routine machine operating work. In addition, the Organization argues that the Carrier failed to disallow the claims within the prescribed time limits set forth in the Rules.

The Carrier denied the claim contending that the Claimants were fully employed on the dates in question and, therefore, suffered no loss in pay. Furthermore, the Carrier argued that this work was not reserved exclusively to Maintenance of Way employees.

After several appeals by the Organization, the Carrier's final position is that the Organization did not meet its burden of proving that this work has been historically exclusively performed by its members. Therefore, on this basis, the Carrier denied the claim.

This Board reviewed the record in this case, and we find that this is a duplicate of an identical case that was raised in Docket MW-30685. The Organization filed its notice on May 20, 1992, and that case became Docket MW-30685 before this Board. The Carrier filed its notice with the Board on April 24, 1992, and that case became Docket MW-30675. The identical case, MW-30685, was argued before Referee Mikrut on January 10, 1995. This case was argued on May 11, 1995.

The Third Division issued an Award in Docket MW-30685, Award 31394, on February 29, 1996. Since that claim involves the same facts raised by the Claimants for the 60 hours of straight time for the period April 15 through 21, 1991, this Board has no choice other than to dismiss the claim.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of April 1996.