

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31447
Docket No. MW-30676
96-3-92-3-405

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

(Soo Line Railroad Company (former Chicago,
(Milwaukee, St. Paul & Pacific Railroad
(Company)

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees

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

(1) Claim on behalf of Larry Zwiefel, crew member for one-hundred and twelve (112) hours straight time at the applicable crane operator's rate of pay for lost work opportunities as a result of the Carrier's alleged utilizing and [sic] outside contractor, Railroad Specialist Systems, to perform tie handling, sorting and piling within the Carrier's single tracking project on the Minneapolis, Minnesota to Milwaukee, Wisconsin Corridor. Organization's File No. C-17-91-C080-07."

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 Claimant in this case holds seniority as a Machine Operator and has routinely been assigned to perform crane operating work such as recovering used ties.

Beginning April 29 and continuing through May 17, 1991, the Carrier hired an outside contractor to operate a crawler crane to recover ties, and sort through reusable ties and scrap ties. The contractor's employee expended 112 man-hours to perform this work.

The Organization filed a claim arguing that this type of work has been customarily and historically been performed by Maintenance of Way employees. Furthermore, it points out that per the Agreement, the Carrier must give advance notice of its intention to contract out. In this instance, the Organization alleges the Carrier did not give the General Chairman advance written notice. Finally, the Organization contends that the Claimant was qualified and available to perform the work in question had he been afforded the opportunity to do so.

The Carrier denied the claim contending that the Claimant was working on another assignment on the date in question. Therefore, he suffered no monetary loss. Furthermore, the Carrier argued that the work in question did not exclusively belong to Maintenance of Way employees.

In the Organization's appeal, it argued that the Carrier "had failed to timely deny this dispute in accordance with Schedule Rule 47". It reiterated its position that the Carrier violated Rule 1 of the Agreement.

Again, the Carrier denied the claim contending that the Organization had failed to meet its burden of proof. The Carrier took the position that "the Organization's claim in this dispute was purely speculative unsupported by factual evidence."

This Board has reviewed the record in this case, and we find that it is a duplicate to Docket MW-30686. Apparently, the Organization filed its notice to the Board on May 20, 1992, in Docket MW-30686. The Carrier had already filed its notice with the Board on April 24, 1992, in this case. Docket MW-30686 was argued before Referee Mikrut on January 10, 1995. This case was argued on May 11, 1995.

The Third Division with Referee Mikrut entered Award 31395 in Docket MW-30686 on February 29, 1996. In that case, which is the identical case to this case involving the same 112 hours of pay being sought by Claimant Zwiefel, the Third Division awarded that the claim be sustained pursuant to Rule 47. Since this case has already been ruled upon by the Board in the earlier docket, we find that this case should be dismissed.

AWARD

Claim dismissed.

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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 25th day of April 1996.