

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31663  
Docket No. MW-31205  
96-3-92-3-889**

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

**(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(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 (Kamadulski) to perform excavation work on Track Nos. 55 and 56 at Jefferson Avenue in St. Louis, Missouri, beginning October 7, 1991 and continuing (System File 1991-18/013-293-14).
- (2) As a consequence of the violation referred to in Part (1) above, Large Machine Operators R.E. Gray, R. Gartner, D. Stogner, R. Gower, R. Glenn, J. West, W. Bailey, L. Crouch, D. Matthes, and Truck Operators J. Derochie, O. Rodriguez, H. Goodwin, J. Wilson, R. Jackson, J. Pfeiffer, J. Headrick, J. Mason, P. Poss, N. Libell, C. Jefferson, W. Green, R. Brown, C. Laden, A. McCarter, L. Gates, S. Gray, C. Carrico, W. Vickers, A. Smoot, J. King and W. Wiley shall each, in accordance with their seniority, be allowed pay at their respective rates for an equal proportionate share of the total number of man-hours expended by the outside forces performing the above-described work beginning October 7, 1991."

**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.

On March 5, 1991, the Carrier notified the General Chairman of its intent to contract out the grading, drainage and hauling work in connection with the relocation of tracks 55 and 56. The relocation of these tracks was required to make room for the Bi-State (Metrolink) light rail system. The work was to be done on property owned by Bi-State. After completion of the work the property was deeded to the Carrier. The Carrier's track forces laid the rail in connection with this project.

Because of several delays the work did not begin until October 7, 1991. At the time the work began all the Carrier's maintenance of way employees were fully employed. On November 25, 1991, 40 employees of the Track Department were furloughed. None of the Claimants were among those furloughed.

The Organization filed this claim on the basis that the Carrier violated the Scope Rule of the Agreement. The Scope Rule on this property is general in nature.

There is no doubt that Carrier employees have performed this type of work in the past. However, in this case the Organization was notified of the involvement of Bi-State. The work was being performed at the direction of Bi-State. Other than making room for the light rail system there was no operational need for the Carrier to relocate the tracks.

It has not refuted that the work was performed on Bi-State property. The Organization was fully appraised of the involvement of Bi-State. Based on the facts presented in this case the Board concludes the contracting out was unavoidable and directed by Bi-State.

### **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 29th day of August 1996.**