

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32354
Docket No. MW-31925
97-3-94-3-283**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(The Kansas City Southern Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Pat Williams Construction) to perform Bridge and Building Subdepartment work (painted the underpass) at Mile Post 668.5 on Highway 71 north at Leesville, Louisiana beginning July 17 through 24, 1992 [Carrier’s File 013.31-320(539)].**
- (2) The Carrier also violated Addendum No. 9, Article IV of the May 17, 1968 National Agreement when it failed to furnish the General Chairman with advance written notice of its intention to contract out said work.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Messrs. R. Martin, R. L. Laffitte, J. T. Waller, C. E. Dowden and J. T. Dryden shall each be allowed compensation at their respective straight time rates for the fifty (50) man-hours expended by the outside forces in the performance of said work on each of the eight (8) dates cited.”**

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 were given due notice of hearing thereon.

The Organization asserts that the Carrier violated the May 17, 1968 National Agreement by failing to comply with Article IV requiring fifteen days advance notice in contracting out work. The work herein disputed was the alleged painting by an outside contractor of a bridge over Highway 71. The Organization alleges that the Carrier not only failed to provide advance notice, but also violated Agreement Rules which protect such work for the employees. In violating the Scope Rule of the Agreement, the Carrier permitted the outside contractor, Pat Williams Construction, to work on the weekend. Such work was protected by the Agreement and performed on an overtime basis. The Organization holds that the employees lost work opportunity when the Carrier failed to fulfill its obligations under the various Agreements to utilize its forces to perform the disputed work. It also remains the Organization's position that the Carrier could have easily obtained the necessary equipment to perform the work.

This Board has carefully studied the full record as presented by the parties to this dispute. We note that the Carrier letter dated May 12, 1994 which was not addressed by the Organization on property or in its Ex Parte was presented prior to the date of appeal to the Board. The Board finds that letter on point with the full record of this dispute. The Carrier noted that the bridge in dispute was in fact, an overpass owned by the State of Louisiana. In the penultimate paragraph the Carrier stated:

"It appears that a Pat Williams did paint one-half of one State owned overpass structure in July 1992. The painted portion can be viewed while moving north on Highway 171 just east of Union Street. The painting of this overpass was not done at the request of nor the control of the Kansas City Southern. Our forces have never performed work of any kind on either of the two (2) overpasses in Leesville."

The Board cannot find a violation of any Agreement or Rule when, as here, there is no showing that the work performed belonged to the Carrier; was under their control; was authorized by the Carrier; or was even on Carrier property. A full reading of this record leads to the conclusion that there is no basis for the claim at bar.

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 13th day of November 1997.