

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32559
Docket No. MW-31724
98-3-93-3-755

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(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 an outside contractor (Gillis Construction) to clean out road crossings and haul away crossties from the Hunt Yard to Farmersville (Mile Posts T-184 to T-185) on July 17, 18 and 19, 1992 [Carrier's File 013.31-320(537)].**
- (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. C. Garrett, L. Brisker, J. E. Caesar, D. E. Everett, J. C. Harris, C. Williams, W. A. Fredieu, C. Gilcrease and J. Brisker shall each be allowed pay at their respective time and one-half and double time rates for an equal proportionate share of the fifty-eight (58) hours [fifty (50) time and one-half and eight (8) double time hours] expended by the outside forces on July 17, 18 and 19, 1992 in the performance of said work."**

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 disputed work concerned a readily recognizable emergency situation as a consequence of a main line derailment with overturned rail for more than a mile.

Carrier forces were called to make emergency repairs and did so on extensive overtime hours. The Carrier also made use of a contractor's equipment operated by two of the contractor's employees.

The Claimants were on assigned rest days. The Carrier states they were called for service but were not "available;" the Organization contends the Claimants were not called. The Board finds that this issue is not determinative in the resolution of the dispute.

In this recognized emergency situation, the notice requirements of Article IV of the May 17, 1968 National Agreement are logically inapplicable. In any event, most of the work was performed by Carrier forces. The dispute concerns the use over a two-day period of contractor equipment, together with two employees to operate it, for the sole purpose of restoring track to use on an emergency basis. This is not the type of circumstance to which the Article IV restrictions on the Carrier may properly be applied.

AWARD

Claim denied.

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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 29th day of April 1998.