

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32790
Docket No. MW-30731
98-3-92-3-530**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Denver Union Terminal Railway Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned or otherwise permitted outside forces (Quality Paving Company) to perform repairs to Platforms #1 and #2 at the Denver Union Terminal beginning July 14 through 17, 1991 (System File DUT-91-01/018.1).**
- (2) The Agreement was further violated when the Carrier failed to give the General Chairman advance written notice of its intent to contract out said work as required by Article IV of the May 17, 1968 National Agreement.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants D. A. Archuleta, E. R. DeHerrera, M J. Culpepper and R. T. Rael shall each be allowed pay for an equal proportionate share of the total number of man-hours expended by the outside forces at their respective straight time and time and one-half rates of pay."**

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.

On Friday, June 14, 1991, the National Railroad Passenger Corporation (AMTRAK), which is a tenant on Carrier's property, contracted with Quality Paving Company to have repairs made to the passenger platform at the Denver Union Station. There is no controversy that the work complained of did, in fact, take place.

On June 20, 1991 the Organization filed a claim requesting that the four above-named Claimants be paid for the time expended by employees of the outside contractor. The claim was denied and subsequently progressed in the usual manner.

The Organization has not refuted the Carrier's protestation, expressed in its first letter of denial, that it had no notification from its tenant Carrier that the work would be or was being performed. In addressing similar cases the Board has held:

"... Under the particular circumstances, where the Carrier had no direct or indirect involvement or knowledge, and noting that it was an isolated occurrence, the Board is of the opinion that the Carrier did not violate the Agreement." (Third Division Award 23574)

See also, Third Division Awards 23422, 25094 and 26082. Accordingly, the present claim is denied.

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 23rd day of September 1998.