

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36092
Docket No. MW-34955
02-3-98-3-727

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

PARTIES TO DISPUTE: (**Brotherhood of Maintenance of Way Employees**
(**CSX Transportation, Inc.**
(**(former Clinchfield Railroad)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (J. R. Bowman Construction Company) to perform Bridge and Building Subdepartment work (building an office building and concrete loading ramp) onto the Heavy Car Repair Shop at Mile Post 134, Erwin, Tennessee beginning July 16, 1997 and continuing [Carrier's File 12(97-2581) CLR].**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with an advanced written notice of its intent to contract the work described in Part (1) above, or to make a ‘good-faith’ effort to reduce the incidence of contracting out scope covered work and increase the use of its Maintenance of Way forces as required by Rule 48 and the December 11, 1981 Letter of Understanding.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Messrs. D. V. Brewer, J. Byrd, R. D. Hollifield, G. K. Willis, G. E. Griffith and T. J. Sams shall each be compensated at their respective and applicable rates of pay for an equal proportionate share of the total number of man-hours expended by the outside forces in the performance of the work in question beginning July 16, 1997 and continuing until the violation ceased.”**

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 undisputed record evidence establishes that, sometime prior to mid-July 1997, the Carrier contracted with J. R. Bowman Construction Company to construct an office building and concrete loading ramp connected to the Heavy Car Repair Shop at Erwin, Tennessee. Nor is it disputed that the Carrier subcontracted that work without advance notice to BMWE General Chairman T. R. McCoy, Jr. and without the opportunity for discussion, as mandated by the good-faith effort commitments in the December 11, 1981 Hopkins-Berge Letter and Rule 48 of the Agreement. As discussed further in companion Third Division Award 36094 the Carrier temporarily suspended performance of the improperly subcontracted work on September 8 after the Organization filed the instant claim on September 4, 1997.

Because of the blatant and unmitigated failure of the Carrier to comply with the notice and good-faith discussion provisions of Rule 48 and the December 11, 1981 Hopkins-Berge Letter, we will sustain Parts 1 and 2 of the claim. As for Part 3, notwithstanding the Carrier's "full-employment" defense, there is ample on-property precedent, e.g., in Third Division Awards 30970, 31597 and 31777 for awarding each of the named Claimants compensation at his/her respective and applicable rates of pay for an equal proportionate share of the 523 man-hours expended by the outside forces in the performance of the work in question, for the period beginning July 16, 1997 and ending with the temporary suspension of the subcontracting on September 8, 1997.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 22nd day of July 2002.