

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 36226  
Docket No. MW-35829  
02-3-99-3-834**

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

**(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(Duluth, Missabe and Iron Range 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 (Hulcher Contracting) to perform routine Maintenance of Way and Structures Department work (switch installations) on the Missabe Division on July 28 and 29, 1998 in the vicinity of Keenan, on July 30, 1998 at BN Saunders, on August 13, 1998 at Nopeming, and on August 14, 1998 at Mountain Iron Yard (Claim No. 18-98).**
- (2) As a consequence of the violation referred to in Part (1) above, the two (2) senior crane operators working in the classification, the oldest Class B Machine Operator working in the classification and the four (4) oldest laborers working in the classification on the Missabe Division shall each be compensated for an equal proportionate share of the total number of man-hours expended by the employees of the outside forces while performing said Maintenance of Way 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.

Supplement No. 3 provides, in essence, that the Carrier make "every reasonable effort" to perform all maintenance work with its own forces; provide notification in writing to the General Chairman concerning proposed contracting to outside forces; and afford the General Chairman opportunity to discuss the matter.

The Carrier notified the General Chairman of its intention to utilize a contractor with "side-boom dozers" to assist Maintenance of Way forces in various "turn-out installations around the system." Conference was requested by and granted to the General Chairman.

The record shows that the Carrier did not own equipment to perform the portion of the work contracted and that its forces were not experienced in operating such equipment, even it were available. The Carrier met its obligations under Supplement No. 3 and maximized the use of its forces in the work, thus demonstrating the "good faith" required in such matters.

### 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 24th day of September 2002.**