

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36282
Docket No. MW-35495
02-3-99-3-400**

The Third Division consisted of the regular members and in addition Referee Richard Mittenthal when award was rendered.

PARTIES TO DISPUTE: (**(Brotherhood of Maintenance of Way Employees**
(**Burlington Northern Santa Fe Railway**
(**(former St. Louis-San Francisco 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 to perform Maintenance of Way work [using two (2) dozers, one (1) backhoe, one (1) grader, two (2) foremen and ten (10) dump trucks in the extension of a switching lead] at Harvard, Arkansas beginning August 18, 1997 through September 18, 1997 (System File B-1635-54/MWC 97-12-16AA SLF).**
- (2) As a consequence of the violation referred to in Part (1) above, ‘ . . . Special Equipment Operators C. E. Green, R. R. Ray, L. A. Taylor and W. L. Mason, and Foremen B. R. Joiner, A. D. Hurst, and nine (9) Trackman Drivers from seniority district No. 67 all be paid a total of 4680 hours, equally divided among them at their respective 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.

The Carrier notified the General Chairman on July 27, 1997, that it intended to contract out "the new construction of the extension of the switching lead at Harvard Yard in Harvard, Arkansas." It contemplated that the following work would be done by contractors: embankment (15,932 cubic yards, compacted); install row fencing (3,900 feet); excavation (67,575 cubic yards); clearing and grubbing (1.8 acres); subballast (4,468 cubic yards, compacted); and drainage (install 60-inch CMP). It anticipated that the contractors would begin this job no later than August 13, 1997. Equally important, its notice called for BMW-represented employees to install 3,750 feet of new track including ties, ballast, surface, and one turnout along with relocation of three existing turnouts with new switch tie packages and installation of a concrete grade crossing.

Discussions of the proposed contracting out were held. But the Organization was unable to persuade the Carrier to assign the other portions of the project, particularly the "dirt work," to the Carrier's employees. A grievance followed.

This case is closely related to the dispute in Third Division Award 36280. It presents much the same evidence with respect to essentially the same issue. The Board finds, as it did in Third Division Award 36280, that the record fails to establish that the type of work in question has been done exclusively by Carrier employees in the past. Such work has no doubt been assigned to such employees on occasion, but it has also been assigned to contractors. Given these circumstances, the Organization's claim is without merit.

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 28th day of October 2002.