

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36283
Docket No. MW-35496
02-3-99-3-403

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 (Robert Norris) to perform Maintenance of Way track work [using three (3) rollers, two (2) graders, one (1) water truck, one (1) dozer, one (1) scraper, two (2) trackhoes and one (1) crane, etc.] in constructing a siding between Mile Post 454.68 and Mile Post 456.40 near Tyronza, Arkansas beginning June 9, 1997 and continuing (System File B-2083/MWC 97-09-18AA SLF).
- (2) The Agreement was violated when the Carrier assigned outside forces to perform Maintenance of Way B&B work (removing old bridge and installing prefabricated box culverts) at Mile Post 455.10 near Tyronza, Arkansas beginning July 3, 1997 and continuing (System File B-888-2/MWC 97-09-15AA).
- (3) As a consequence of the violation referred to in Parts (1) above, Claimants J. Neece, P. Morris, D. J. Brewer, M. A. Hosiner, J. Barton, H. D. Welsh, J. R. Johnson, J. S. Williams, J. Holland and R. E. Haile shall now each be compensated at their respective rates of pay for an equal proportionate share of the total man-hours expended by the outside forces in the performance of the work in question.
- (4) As a consequence of the violation referred to in Part (2) above, Claimants J. H. Moore, S. M. Mitchell, R. E. Owens, L. D. Rogers, R. Harris, M. E. Jones, R. L. Rothermich, N. J. Thomason, J. E. Chambers, R. L. Smith and J. D. Hunt shall now each be compensated

at their respective rates of pay for an equal proportionate share of the total man-hours expended by the outside forces in the performance of the work in question.”

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 May 4, 1997, of its intent to contract out the construction of 1.74 miles of new siding track and the removal and replacement of a bridge at Tyronza, Arizona. The contractors were expected to haul, grade and compact subballast and perform other related work for the purpose of creating a foundation for the new siding. They were also expected to excavate, grade, compact, stabilize soil, backfill, install box culverts, and build fencing in connection with the construction of a new bridge. The Carrier planned to use BMW-represented employees to perform all the track work, tie installations, and surfacing.

The parties, pursuant to the General Chairman's request, met and discussed the project. The Organization asked that the contractor work be assigned instead to BMW-represented employees. The Carrier did not agree. Two claims were then filed by the Organization. The first, on August 4, 1997, protested the contracting out of the “dirt work” and other tasks on the new siding; the second, on August 18, 1997, protested the contracting out of the bridge work.

The Organization argues that the work done by the contractors “lies at the very heart of the collective bargaining agreement and is contractually reserved to the Carrier's Maintenance of Way Department and has historically, traditionally and customarily been assigned to and performed by the Carrier's employees. . . .” It argues too that the Carrier

lacked "good faith" reasons for contracting out. It relies on Rules 1 and 5 and a December 11, 1981 Letter as well as past practice.

This case is a mirror image of Third Division Awards 36280 and 36282. All three cases involve the same parties. All three involve substantial construction projects - a siding extension, a new siding, a switching lead extension, a bridge. All three involve the same kind of work. The track and tie installation was assigned to BMW-employees. The rest of the jobs, largely "dirt work," were given to contractors.

The Board held in Third Division Awards 36280 and 36282 that the record failed to establish that the work in dispute had been done exclusively by BMW-employees. Rather, the record suggested that such work had been performed in the past both by contractors and BMW-employees. Therefore, the claims in those cases were denied. There is no reason why the present case should be treated any differently. The evidence is much the same as it was in the other cases. And the Rules themselves simply do not provide for the exclusive jurisdiction the Organization seeks. Nor is there any basis for saying that there was a lack of "good faith" on the Carrier's part.

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.