

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 36697  
Docket No. MW-36229  
03-3-00-3-419**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

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

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier assigned outside forces (Gurtz Weiler Inc.) to perform Maintenance of Way Department work (install fall protection cable and replace platform walkway boards) on #8 Docks Yard Floodlight Towers beginning May 5, 1999 and continuing instead of B&B Mechanics M. A. Weaver, D. B. Gurzynski and L. J. Dannenberger [System File I081207499/12(99-0685) TTR].**
- (2) The Agreement was further violated when the Carrier failed to provide advance written notice to the General Chairman prior to contracting the work as required by Rule 41.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants M. A. Weaver, D. B. Gurzynski and L. J. Dannenberger shall now each be compensated at their respective rates of pay for eight (8) hours per day, five (5) days each week, beginning May 5, 1999 and continuing.”**

**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 issue in dispute is the Carrier's contracting out for the installation of fall protection safety cables and replacing of walkway platform boards with metal grating on the floodlight towers on the Mobile Coal Shiploader at Presque Isle Docks on the Hocking Seniority District of the Detroit Service Lane. The Organization argues that the work was not properly contracted out. It further argues that the work had been previously performed by BMW-employees; that they were capable of performing the work; that it is work B&B Mechanics have historically performed; and that it required no special tools or equipment. The Organization maintains that the Carrier's actions violated the Agreement.

The Board carefully reviewed the claim at bar. Part 2 of the claim asserts that the Carrier failed to provide advance written notice prior to contracting out. That part of the claim is not supported by the evidence of record. The Carrier provided a Notice of Intent on April 19, 1999. It advised the Organization that it intended to contract out for "safety cable installation, and replacing wood plank platforms with metal grating . . . and . . . ladders. . . ." It stated that the project was to be contracted out due to the fact that the "Carrier does not have adequate equipment or available forces to perform the work within a timely manner." The Organization confirmed the conference held on May 4, 1999 with a May 12, 1999 letter. It suggested the Carrier "increase its forces with new hires" or "reschedule the regular duties" of its employees. It further suggested that the Carrier "make a good faith effort to obtain the equipment necessary." The Organization reiterated the Carrier's position that "it does not have forces available to perform the work in a timely manner."

We reviewed the full record and find no support for the Organization's position. Even if this were "clearly B&B work," and a few examples do not prove the case, there was no denial that the Carrier lacked qualified or furloughed employees. The Organization did not persuasively dispute the issue of completion in a "timely manner" or that this was required by OSHA. The Organization did not deny that all B&B

employees were fully occupied with normal duties. The pictures and statements provided do not address the key fact that the Carrier served notice for the "installation of safety cables . . . et al." We find no proof whatsoever that BMW-employees ever installed fall protection cable. The written statements attest to how the work was performed by the contractor, what work had been performed by BMW-employees in the past and what the employees "could have" done, given their past work on "similar" towers. This is too vague to reach a conclusion that the instant work was improperly handled by the Carrier.

The late exchange of letters is not relevant to the determination of this dispute. There is no persuasive proof from the letter of conference over the intent to contract out; the attached signed statements of repairing basket floors; the two inspection reports; the arguments over special tools or equipment necessary to complete the project; or additional pictures or statements that the work could have been performed; that prove historical and traditional performance of installing fall protection cable, let alone other aspects of this work. The claim must be 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 18th day of August 2003.**