

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37396
Docket No. MW-37120
05-3-02-3-79

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Duluth, Missabe and Iron Range Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned outside forces (Lakehead Contractors) to perform Maintenance of Way work (excavate roadbed for installation of Geo Grid) at South Ambridge on September 28 and 29, 2000 (Claim No. 32-00).
- (2) The Carrier further violated the Agreement when it failed to properly notify and confer with the General Chairman concerning its intent to contract out the above-referenced work as required by Supplement No. 3.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Track Department employe S. Wedel shall now be compensated for sixteen (16) hours expended by the outside forces in the performance of the aforesaid work at his respective straight time rate 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.

Careful review of the record reveals no significant evidentiary differences in this claim from that advanced in Third Division Award 37394. The work in dispute is the same but occurred on different dates at a different location. The contentions made on the property are not significantly different than those raised in the prior Award. Accordingly, as in that dispute, we must find that no violation of the Agreement has been proven on this record.

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 February 2005.