

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38073
Docket No. MW-35871
07-3-99-3-881

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (**(Brotherhood of Maintenance of Way Employees**
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned or otherwise allowed employees of the BNSF Railroad Company to relocate and construct lead track on property owned and maintained by the UP Railroad Company between Mile Posts 80.9 and 81.8 at Bill, Wyoming beginning May 26 through June 14, 1998 (System File 6RP-5306T/1155317).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants L. L. Nicolay, R. L. Sandstrom, M. A. Carland, D. A. Swane, L. E. Hathorn, D. A. Caspers, K. A. Retzlaff, R. D. Hutchinson, R. L. Muir, D. D. Jurrenns, J. P. Chvala, M. D. Braitwait, H. A. Pope, G. L. Brady, A. Miller, and T. B. Nelson shall each be compensated for thirty-two (32) hours' pay at their respective straight time rates of pay and each shall be compensated for twenty-eight (28) hours' pay at their respective time and one-half rates of pay and D. E. Cockrell, W. J. Wasserburger, R. T. Powers and A. Q. Cisneros shall each be compensated for eighty (80) hours' pay at their respective straight time rates of pay and each shall be compensated for forty-four (44) hours' pay at their respective time and one-half 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 claim in this case alleges that the Carrier allowed BNSF Railway Company forces to relocate and construct lead track on property owned and maintained by the Carrier between Mile Posts 80.9 and 81.8 at Bill, Wyoming, during the period May 26 through June 14, 1998.

The Joint Line Agreement provides at Appendix M, Article I that “. . . the [Carrier] may let to contractors and may arrange to be performed by contractors' forces any and all work in connection with the construction, rebuilding and dismantling of tracks, structures, and/or other facilities pertaining to such Western Coal Project, subject to the conditions hereinafter set forth.” With respect to “New Line - Shawnee into Powder River Basin,” the Joint Line Agreement provides at Appendix M, Article I(4) that “[t]his entire line has been or will be built by contractors employed by the BN.” That section further provides that somewhere in the vicinity of Bill, Wyoming, certain relay and set-out tracks as well as welfare, agent, mechanic-in-charge, etc., facilities will be constructed for the C&NWT by contract. That section also provides that “[m]aintenance of such tracks and facilities (other than lodging facilities if constructed) shall be subject to Rule 1(b).”

The evidence sufficiently shows that the disputed work performed by BNSF forces was new construction as part of a third main line track which required the relocation of the west lead into the yard. This new construction work was therefore

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governed by the Joint Line Agreement which allowed BNSF forces to perform the work.

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 21st day of February 2007.