

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38147
Docket No. MW-37471
07-3-02-3-556

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CP Rail System (former Delaware and
(Hudson 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 (Duckworth) to perform Maintenance of Way work (sort and transport track material) from its yard in Taylor, Pennsylvania to its yard in Binghamton, New York on dates beginning June 1 and continuing through July 19, 2001 (Carrier's File 8-00206 DHR).
- (2) The Agreement was further violated when the Carrier failed to comply with the advance notice requirements regarding its intent to contract out the aforesaid work or make a good-faith effort to reduce the incidence of subcontracting and increase the use of its Maintenance of Way forces as required by Rule 1 and Appendix H.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants J. Bruno and R. Gittins, Sr. shall be compensated for sixteen (16) hours' pay; Claimant A. Kovaleski shall be compensated for thirty-nine (39) hours' pay; Claimant Daniel Kovaleski shall be compensated for twenty-four (24) hours pay; Claimant J. Mesiti shall be compensated for thirty (30) hours' pay; Claimant J. Kordish shall be compensated for twelve (12) hours' pay; Claimant Donald Kovaleski shall be compensated for eight (8) hours' pay;

Claimant R. Mullen shall be compensated for thirty-two (32) hours' pay; Claimant P. Newcomb shall be compensated for twenty-four (24) hours' pay; and Claimant R. Penzone shall be compensated for three (3) hours' pay. 'Due to the violations listed above, the Carrier will pay each claimant, man for man, for all hours worked by the contractors' Employees. At the Carriers employees respective rates of pay including hours that was worked after 3:30 pm that would have been at the overtime 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.

The instant claim was initially filed on July 6, 2001. In its September 17, 2001 denial, the Carrier contended that the work at issue was not reserved exclusively to BMW-E-represented employees and, further, that the Carrier had historically hired outside contractors to transfer and deliver materials and supplies. In addition, it contended that it did not have available the equipment to transport the material in question at the time it was required to be transported.

In its November 12, 2001 appeal, the Organization attached several statements from BMW-E-represented employees in which each asserted that he had transported and unloaded similar material from the Taylor Yard to Binghamton, using the Carrier's own equipment. The Carrier denied the appeal on December 5, 2001. In Third Division Award 26691, the Board sustained a similar claim between the parties to this dispute. Then as now, the Carrier subcontracted for the transport

of company materials without proper advance notice to the Organization. After careful review of the record, the Board sees no reason to depart from established on-property precedent. The Board therefore finds that the Carrier failed to provide advance notice of its intent to subcontract the scope covered work of transporting Carrier-owned track materials between its yards in Taylor, Pennsylvania, and Binghamton, New York.

The parties are directed to meet for the purpose of ascertaining the actual hours of work performed by the outside contractor and the allocation of those hours among the Claimants. The Carrier shall then pay the Claimant's their allocated hours at the straight time rate in light of the proven notice violation.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of April 2007.