

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 38949  
Docket No. MW-38268  
08-3-NRAB-00003-04196  
(04-3-196)

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

(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(The Texas Mexican 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 (R. J. Corman) to perform Maintenance of Way and Structures Department work (haul material, install ties and related work) on main line track between Mile Post 136.00 in the vicinity of Banquette, Texas and Mile Post 3.00 in the vicinity of Laredo, Texas beginning on August 18, 2003 and continuing (System File EPTM-03-112/260).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper notice of its intent to contract out the work in question and failed to exert a good-faith effort to increase the use of Maintenance of Way forces and reduce the incidence of employing outside forces pursuant to Rule 29 and the December 11, 1981 Letter of Agreement.
- (3) As a consequence of the violations referred to in either Parts (1) and/or (2) above, Claimants E. Lara, R. Garza, J. Lopez, V. Moncivais, T. Vasquez, J. Garcia, R. Couling, A. Vira, G. Vasquez, N. Saenz, M. Paz, L. Serna, A. Ardrice, F. Rodriguez, R. Guardiola, J. Herrera, Jr., A. Campos, III and A. Jimenez shall now each be compensated for three hundred sixty (360)

hours' pay at their respective straight time rates of pay and seventy-eight (78) hours' pay at their respective time and one-half rates of pay and the Claimants shall be compensated at their respective rates of pay for an equal proportion of any and all additional man-hours expended by the outside forces in the performance of the aforesaid work beginning August 18, 2003 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 notices and conference discussed in Third Division Award 38948 are applicable to the work involved in this dispute. For reasons set forth in that Award, this claim, which covers different aspects of the project discussed in that Award, also does not have merit and will be denied.

**AWARD**

Claim denied.

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**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 29th day of February 2008.