

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39034
Docket No. MW-38195
08-3-NRAB-00003-040117
(04-3-117)

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 Employees
(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 Railroad Contractors) to perform Maintenance of Way and Structures Department work (unload rail, track material and install same) on main line track between Mile Post 136.00 near Banquete, Texas and Mile Post 9.00 near Laredo and Agilares, Texas beginning on June 23, 2003 and continuing (System File EPTM-03-100-A/255).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a 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 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 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 June 23, 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 instant dispute is another in a line of claims that emerged in recent years after the Carrier made the transition from government ownership to private ownership. The claims all involve the use of outside contractors to perform major construction or rehabilitation of the Carrier's approximately 160 miles of trackage in the vicinity of the international border with Mexico near Laredo, Texas. The Awards of the Board have recognized the Carrier's right to sub-contract projects of large-scale magnitude where the Carrier's regular 19-person Maintenance of Way force could not perform the work in a timely manner. See, for examples, Third Division Awards 37008, 37009, 37963, 37986, 37992, and 38244 developed with the assistance of four different Referees. See also the Awards cited in the referenced Awards.

The factual setting of the instant dispute is not materially different from those in the cited Awards. The Carrier gave notice of its plans to contract out a major six-part project by letter dated April 23, 2003. The Carrier supplied additional information details as they emerged by letters dated April 29 and June 9, 2003. The parties had a conference on the notice on May 8, 2003. While the parties did not

reach an understanding with respect to the notice, the requirement to conference in good faith does not require that an agreement is achieved. Accordingly, we find that the Carrier satisfied its notice obligations under Rule 29 of the parties' Agreement.

The instant claim essentially challenges the installation of new rail on 15 curves between Mile Posts 9 and 136 on Carrier's main line. The Organization did not effectively refute the Carrier's assertion that such large-scale projects have been contracted in the past. Indeed, the six prior Awards cited earlier confirm that practice. Moreover, it was undisputed that the contractor force performing the work averaged some 47 workers per day for ten hours per day from July 9 to July 28 and August 11 - 17, 2003. A two-person welding crew was also used for most of those days. A force of this size was more than double the size of the Carrier's regular force. It is also undisputed that all of the Carrier's regular force members were fully employed during the project time frame.

It was further undisputed that the Claimants have initiated additional claims for the same time frame involving the other five parts of the overall project. Those portions of the project involved a seven-person road crossing crew, a 33-person tie crew, and another seven-person switch & tie crew. It is clear from the record that the work in dispute would have overwhelmed the capabilities of the Carrier's regular forces and would not have allowed them to perform the timely accomplishment of the other five portions of the project.

For the same reasons expressed in the six cited prior Awards of the Board, we do not find that the Organization has established a violation of the Agreement as alleged in the claim. The claim, therefore, must 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 22nd day of April 2008.