

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 39035
Docket No. MW-38197
08-3-NRAB-00003-040119
(04-3-119)

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 (Lone Star Construction) to perform Maintenance of Way and Structures Department work (haul and install rail, ties and related work) on the main line track at Mile Post 92 near Benevides, Texas and Mile Post 3 near Laredo, Texas beginning June 23, 2003 and continuing (System Files EPTM-03-97/251 and EPTM-03-106/258).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with 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, Claimant J. Garcia shall now be compensated at his respective rate of pay for an equal proportion share of the total number of 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.

Our review of the Submissions of the parties discloses a substantial difference in their content. According to the Carrier's Submission, the dispute consists of one claim dated August 26, 2003 that challenges work contracted for performance at Mile Post 3 in the vicinity of Laredo, Texas, beginning July 1, 2003. According to the Statement of Claim filed with the Board by the Organization, the dispute combines two separate claims for the same Claimant beginning on June 23, 2003 at different locations some 89 miles apart. The Organization's Submission contains records for both claims.

It is well-settled that where there is a substantial variance between the dispute handled on the property and that presented to the Board, we cannot resolve the dispute. Adherence to that principle requires that the claim, or claims, be dismissed. See Third Division Awards 15877, 19425, 27883, 28466, and 35967.

AWARD

Claim dismissed.

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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.