

**\*\*Corrected\*\***

Form 1                      NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 39388  
Docket No. MW-37489  
08-3-NRAB-00003-020567  
(02-3-567)

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 Employes  
(Union Pacific Railroad Company (former Chicago  
( and North Western Transportation Company)

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Denny Lampson, Illinois Contractor) to perform Maintenance of Way and Structures Department work (grade, form, pour and finish concrete bench pads and install benches) on the East Platform at Mile Post 38.3 at Cary, Illinois on April 30, May 1, 2 and 10, 2001 instead of Messrs. M. Jader, D. Murgatroyd and J. Stopa (System File 9KB-6729T/1280027 CNW).
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with a proper advance written notice of its intent to contract out the above-referenced work or make a good-faith attempt to reach an understanding concerning such contracting as required by Rule 1(b).
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants M. Jader, D. Murgatroyd and J. Stopa shall now each be compensated at their respective straight time rates

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of pay for an equal and proportionate share of the one hundred sixty (160) man-hours expended by the outside forces in the performance of the aforesaid work.”

**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 incident precipitating this claim involved the installation of concrete pads and benches at Cary, Illinois. The Organization maintains that the work was traditional B & B work, and that allocation of this work to outside forces violates Rule 1 (Scope) of the Agreement. Further, it alleges that the Carrier failed to give the Organization proper notice of its intent to contract out, and such failure cannot be excused by any alleged “emergency” situation. The Organization contends that the work was at the Carrier’s direction, and for the benefit of UP passengers to sit upon. It also asserts that the Claimants were available and qualified to do the work.

The Carrier points out that the work in question consisted of seating benches installed for the benefit of the Village of Cary, Illinois, and the Commuter Rail Division of the Regional Transportation Authority (Metra) pursuant to a lease between that Carrier and the Village of Cary. It notes that the work was not railroad work done by the UP, but rather was work contracted by Metra and intended as part of a general station beautification project undertaken by Metra.

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Further, because Metra paid for the entire cost of the benches, UP had no control over how the work was performed and by whom.

The Board reviewed the record. We do not find that, under the circumstances, the Carrier had any control or authority regarding the construction of either the bench pads or the installed benches. Accordingly, the Carrier was in no way obligated to give the Organization notice of the work at issue nor, indeed, to have its own employees perform the work.

**Thus the claim must be denied.**

**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 8th day of December 2008.**