

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39963
Docket No. MW-39074
09-3-NRAB-00003-050532
(05-3-532)**

The Third Division consisted of the regular members and in addition Referee Jacalyn J. Zimmerman when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference**

PARTIES TO DISPUTE: (

**(Union Pacific Railroad Company (former Chicago
(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 to perform Maintenance of Way and Structures Department work (grading, drainage, paving, lighting foundation work, utilities work and track removal) in East Minneapolis Yard at Minneapolis, Minnesota beginning on June 4, 2004 and continuing instead of District 7 employees C. Reiswig, A. Stenen, M. Mueller, J. Morgan, E. Wirtz, G. Linquist, I. Determan, A. Steffen and R. Bushinski (System File 7WJ-7414T/1409044 CNW).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with 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 C. Reiswig, A. Stenen, M. Mueller, J. Morgan, E. Wirtz, G. Linquist, I. Determan, A. Steffen and R.**

Bushinski shall now “*** be compensated at their applicable rate of pay for an equal proportionate share of the total man/hours expended by the contractor forces in performance of the cited work at East Minneapolis Yard.”

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.

On April 27, 2004, the Carrier served the following notice upon the Organization:

“This is a 15-day notice of our intent to contract the following work:

Location: East Minneapolis Yard, Minneapolis, MN

Specific Work: Grading, drainage, paving, lighting, foundation, utilities and track removal for facility leased to Triple Crown for roadrailer terminal.

Serving of this “notice” is not be construed as an indication that the work described above necessarily falls within the “scope” of your agreement, nor as an indication that such work is necessarily reserved, as a matter of practice, to those employees represented by the BMW.

On May 4, 2009, the parties held a conference to discuss the proposed contracting out. On May 11, 2004, the Carrier sent the Organization a letter confirming the conference discussions. It stated, in relevant part:

“It was explained that this work involves work being performed by an outside party who is leasing a portion of land from the Carrier. The leasee (sic) is performing the work for their benefit and not for the Carrier’s. This work does not fall under the Scope of your agreement.

Although a final lease has not been signed . . . I have enclosed some preliminary information. You were advised that we would proceed with the contracting of this work.”

The Organization responded:

“It is the understanding of the Brotherhood that, prior to and subsequent to the effective date of the lease agreement with Triple Crown, all track maintenance, track relocation, track retirement and track construction, grading and crossing work in the Carrier’s East Minneapolis Yard will continue to be performed by Carrier’s BMW forces. Prior to the effective date of the lease agreement, Carrier forces will continue to perform all grading and drainage maintenance in the entire East Minneapolis Yard. Subsequent to the effective date of the lease, Carrier forces will continue to perform all track maintenance in the East Minneapolis Yard.”

The work in question began on June 4, 2004. The Organization contends that the lease between the Carrier and Triple Crown was not signed until almost a month later. Thus, the Organization asserts, it was the Carrier, and not the lessee, which contracted to have the work performed. The Organization asserts that the work is Scope-covered, and, in the absence of a valid lease, accrued to the Claimants.

The Carrier points out that the Organization does not dispute it has no claim to work performed on property leased to a third party, and supports its claim only on the basis that there was no signed lease agreement at the time the work commenced. However, the Carrier states, there was a verbal lease agreement in effect, which was ratified in written form July 1, 2004. The Organization's contention as to the validity of the lease is a matter of contract law, the Carrier states, and is outside this Board's jurisdiction. Therefore, it concludes, the Organization has not met its burden of proof and the claim should be denied.

As the Carrier asserts, the Organization does not dispute that it has no claim to work performed on property leased to a third party. The notice sent by the Carrier of the proposed subcontracting specifically stated that the work was to be performed on property leased to Triple Crown, demonstrating that some agreement to lease the property had already been reached. The Organization asserts that until a signed agreement was in effect there was no valid lease, so the work accrued to the Claimants. As the Carrier asserts, however, the issue of whether a verbal agreement constituted a valid, binding contract is governed by the law of contract interpretation and is beyond the Board's jurisdiction. Thus, the Organization failed to meet its burden of proof.

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 30th day of September 2009.