

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40075
Docket No. MW-40385
09-3-NRAB-00003-080179**

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 Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(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 (Morrison Blacktop) to perform Maintenance of Way and Structures Department work (dig trenches for ribbon rail and back fill after rail was laid in) across crossings between Mile Posts 104 and 112.5 on the Geneva Subdivision on August 9, 11 and 31, 2006 (System File 3SW-2177T/1463207 CNW).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper advanced 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 D. Coy, Jr., K. Spooner and S. Silquero shall now each be compensated for twenty-four (24) hours at their respective straight time rates of pay.”**

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.

By letter dated June 8, 2006, the Carrier advised the Organization's General Chairman of a "... 15-day notice of our intent to contract the following work" specifying the following:

"Locations: Geneva Subdivision, Peoria Subdivision

Specific work: - Contractor using equipment to haul material and equipment, cut grade, remove crossing material and debris from the area during the renewal and upgrade of road crossings; start date is June 21, 2006 continuing until June 22, 2007.

* * *

The work is such that the Company is not adequately equipped to handle the work or time requirements must be met which are beyond the capabilities of Company forces to meet."

According to the Carrier's November 16, 2006 letter, on June 16, 2006 a conference was held on the notice.

The instant claim protests the Carrier's use of contractor's forces on August 9, 11 and 31, 2006 who, according to the Organization's September 26, 2006 claim letter:

“ . . . performed Maintenance of Way duties by digging a trench across approximately eight (8) road crossings located between M.P. 104 and M.P. 1125 (sic) on the Geneva Subdivision. The trenches were filled back in with P gravel after ribbon rail was laid through the crossings. Each of the three (3) contractor employees rendered eight (8) hours per day or a total of twenty four (24) man hours performing the Maintenance of Way work. The Contractor employees used a Skid Loader, shovels, and Dump Truck to accomplish the task.”

According to the Carrier:

“Morrison Blacktop was hired to remove the waste blacktop removed from the crossings during the above operations. They also assisted with filling in the trenches to help expediate the reopening of the road crossings. During these operations all of our available people and machines were being used in other parts of the operation. Not using Morrison Blacktop would have resulted in the closing of several public crossing for days instead of a few hours [i]nterrupting traffic and public safety for an unacceptable amount of time.”

The Carrier asserts that this type of work has been contracted out in the past. Further, according to the Carrier, the Claimants were working on the dates set forth in the claim.

The record shows that advance written notice to the Organization for the contracting of work was given by the Carrier; conference was held between the parties on that notice; the disputed work was covered by the notice; and the type of work involved has been previously contracted out by the Carrier.

The Carrier's assertion that Morrison Blacktop was used because **“ . . . all of our available people and machines were being used in other parts of the operation**

[and n]ot using Morrison Blacktop would have resulted in the closing of several public crossing for days instead of a few hours [i]nterrupting traffic and public safety for an unacceptable amount of time” has not been sufficiently refuted by the Organization. Rule 1(B) allows the Carrier to contract out work if “. . . work is such that the Company is not adequately equipped to handle the work; or time requirements must be met which are beyond the capabilities of Company forces to meet.” The burden of proof is on the Organization. The Organization failed to refute the assertions of the Carrier that the use of Morrison Blacktop was permissible under Rule 1(B).

This claim shall therefore 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 19th day of November 2009.