

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 41473  
Docket No. MW-40939  
12-3-NRAB-00003-090238**

The Third Division consisted of the regular members and in addition Referee Patrick Halter when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -  
( IBT Rail Conference**  
**PARTIES TO DISPUTE: (**  
**(CP Rail System/Delaware and Hudson**  
**( 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 (Tioga Construction Company) to perform Maintenance of Way work (installing steel arches, pouring concrete foundations and related crown repair work) at the Nicholson Tunnel in Factoryville, Pennsylvania beginning on September 5, 2007 and continuing (Carrier’s File 8-00585 DHR).**
- (2) The Agreement was further violated when the Carrier failed to comply with the notice requirements regarding its intent to contract out the aforesaid work or make a good-faith effort to reduce the incidence of subcontracting and increase the use of Maintenance of Way forces as required by Rule 1 and Appendix H.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant D. Kovalski shall be compensated at his respective and applicable rates of pay for all straight time and overtime hours expended by outside forces in the performance of the aforesaid work beginning September 6, 2007 through October 12, 2007, Claimant R. Ossig shall be compensated at his respective**

and applicable rates of pay for all straight time and overtime hours expended by the outside forces in the performance of the aforesaid work beginning October 15, 2007 and continuing and Claimants T. Vanderpool, K. Chilson and A. Kovaleski shall now each be compensated at their respective and applicable rates of pay for all straight time and overtime hours expended by the outside forces in the performance of the aforesaid work beginning September 6, 2007 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.

This claim involves the Carrier’s use of outside forces to install steel arches, pour concrete foundations and perform related crown repair work beginning on September 5, 2007 at the Nicholson Tunnel in Factoryville, Pennsylvania.

On March 9, 2007, the Carrier issued the following notice to the Organization:

“RE: Contracting Out Nicholson Tunnel Crown Repair MP 656.00  
Freight Main Line

As part of the tunnel rehabilitation project previously undertaken by the installation of the steel arches in the area 1, we will be contracting the crown repair work in the Nicholson Tunnel in Factoryville, PA, at

mileage 656.0 on Canadian Pacific Railway's Freight Main Subdivision. This work must be undertaken for the safety of railway employees working in the tunnel as well as for a safe fluidity of the trains passing through the tunnel. Due to the specialized equipment and personnel required for the drilling and grouting portions of this work, CPR will be contracting this project.

The work will be executed in two phases located in the area 1 of the tunnel:

- Phase 1: Proceed with the crown apex tunnel liner repair (steel plates installation and grouting);
- Phase 2: drill roof drains through the existing brick liners.

The work is anticipated to start the month of April 2007 and be completed by the end of the year 2007. All work will be done under the Safety Rules For Contractors, and B&B Foreman will be on site for protection at all times when the contractor is on property."

This claim, as well as the issues and arguments set forth therein, are acknowledged by the Organization as a continuation of its claim which was decided by the Board in Third Division Award 41419. In other words, the instant claim is materially similar, if not identical, to the claim adjudicated by the Board in Award 41419, wherein the Board sustained the claim for the front-end loader, but did not sustain the claim for the crown repair work performed at Nicholson Tunnel.

Unlike Award 41419 wherein the claim identified outside forces operating a front-end loader, there is no allegation identified in the instant claim regarding outside forces operating equipment not identified in the notice.

For the reasons set forth in detail in Award 41419, which is incorporated herein by reference, the claim in this proceeding is denied for the crown repair work, including steel arches and concrete foundations at Nicholson Tunnel.

As noted by the Board in Award 41419, “[A]pparent from this record are the diverse and divergent views held by the parties about Rule 1 and Appendix H. Discussions occurred in good faith notwithstanding these differing views and the absence of any understandings between the parties about contracting out.”

**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 13th day of December 2012.