

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41475
Docket No. MW-40971
12-3-NRAB-00003-090253**

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
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(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 (Railworks) to perform Maintenance of Way work (install culvert for an access road) near Mile Post 629.1 and (install hand rails) on Bridge 630.87 at New Milford, Pennsylvania between September 10 and 20, 2007 (Carrier’s File 8-00587 DHR).
- (2) The Agreement was further violated when the Carrier failed to provide a proper advance notice of 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, Claimants D. Kovaleski and G. Hamilton shall now each be compensated for sixteen (16) hours at their respective straight time rates of pay and Claimant A. Kovaleski shall be compensated for eight (8) hours at his respective straight time rate 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.

This claim involves work performed by outside forces (Railworks) installing a culvert for an access road near Mile Post 629.1 and installing hand rails on a bridge at Mile Post 630.87 between September 10 and 20, 2007 at New Milford, Pennsylvania.

Separate companion claims were filed for ditching and track construction work performed between Mile Posts 629 and 632 at New Milford; those claims, which were consolidated for purposes of hearing before the Board, culminated in Third Division Award 41420, wherein the Board sustained the claim for the ditching work, but denied the claim involving track construction.

The instant claim and its issues are materially similar to, if not the mirror-image of, the claim and issues adjudicated by the Board in Award 41420. For the reasons set forth in detail in that Award, the instant claim involving the installation of a culvert at MP 629.1 and hand rails on the bridge located at MP 630.87 is likewise sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of December 2012.