

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42328  
Docket No. MW-41327  
16-3-NRAB-00003-100219**

**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/former 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 (remove/replace switch and related work) in the vicinity of Mile Post 716.1, North End, Necospeck Runaround Track, on the Sunbury Sub beginning on November 11, 2008 and continuing through November 14, 2008 (Carrier’s File 8-00651 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 A. Klemash, A. Kovaleski, R. Penzone, E. Nicholson, C. Gill, A. Thomas and P. Defazio shall now each be compensated at their respective and applicable rates of pay for an equal and proportionate share of the total man-hours expended by the outside forces in the performance of the aforesaid work beginning on November 11, 2008 and continuing through November 14, 2008.”**

**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 August 13, 2008, the Carrier issued a notice advising the Organization of its intent to contract out work stating, in part, as follows:

**“RE: Contracting Out - Various Turnouts - Eight (8) on the NEUS Service Center**

Please be advised that under the provisions of the Collective Agreement it is the Carrier’s intent to complete the installation of eight (8) turnouts on the NEUS Service Area.

This work must be completed on schedule and there are insufficient forces available to complete the work in the required timeframe. All of our forces are currently working and scheduled to continue working.”

The contract scope for each turnout will include all work normally associated with turnout removal and installation, including, but not limited to:

- assembling turnouts or track panels
- removing existing turnouts or track panels from track
- installing turnout or track panels with associated OTM, welds, surfacing and lining, etc.
- dismantling and stock-piling removed turnouts or track panels
- replacing connecting rails between turnouts
- At Binghamton Yard, work will include construction of steel cross tie connecting track between the three steel tie turnouts.

Various machinery and equipment will be used by the contractor to perform this work.

\* \* \*

The work is anticipated to start in late summer, early fall.”

This claim involves the same notice and same kind of work as presented in Third Division Award 42323, although the location or situs for the claimed work is different. Other than a different location, this claim is similar if not identical in material and substantive terms to issues presented and addressed in that Award. For the reasons set forth in detail in that Award, this claim is 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 28th day of July 2016.