

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42331
Docket No. MW-41330
16-3-NRAB-00003-100227**

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

**(Brotherhood of Maintenance of Way Employes
(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 (track construction, installing switches, ties, crossings and related work) on the Rouses Point siding between Mile Posts 188.3 and 190.6 at Champlain, New York beginning on August 1, 2008 and continuing through August 29, 2008 (Carrier’s File 8-00658 DHR).**
- (2) The Agreement was violated when the Carrier assigned outside forces (Railworks) to perform Maintenance of Way work (track construction, installing switches, ties, crossings and related work) on the Rouses Point siding between Mile Posts 188.3 and 190.6 at Champlain, New York beginning on September 2, 2008 and continuing through September 30, 2008 (Carrier’s File 8-00655).**
- (3) The Agreement was violated when the Carrier assigned outside forces (Railworks) to perform Maintenance of Way work (track construction, installing switches, ties, crossings and related work) on the Rouses Point siding between Mile Posts 188.3 and 190.6 at Champlain, New York beginning on October 1, 2008 and continuing through October 10, 2008 (Carrier’s File 8-00661).**
- (4) The Agreement was violated when the Carrier assigned outside forces (Railworks) to perform Maintenance of Way work (track construction, installing switches, ties, crossings and related work) on the Rouses Point siding between Mile Posts 188.3 and 190.6 at Champlain, New York beginning on November 24, 2008 and continuing through December 11, 2008 (Carrier’s File 8-00659).**

- (5) 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'.
- (6) As a consequence of the violations referred to in Parts (1) and/or (5) above, Claimants D. Alger, L. Terrell, P. Bedard, L. Boyle, T. St. Dennis, W. Barcomb, Jr. and B. Fleming shall now each be compensated for one hundred sixty-eight (168) hours at their respective straight time rates of pay and for seventy-five (75) hours at their respective time and one-half rates of pay, Claimants F. Lipka, J. Reightmyer and C. Fountain shall now each be compensated for thirty-two (32) hours at their respective straight time rates of pay and for seventeen (17) hours at their respective time and one-half rates of pay and Claimant J. Bedard shall now be compensated for thirty-two (32) hours at his respective straight time rate of pay and for sixteen (16) hours at his respective time and one-half rate of pay.
- (7) As a consequence of the violations referred to in Parts (2) and/or (5) above, Claimant W. Pelkey shall now be compensated for one hundred sixty-eight (168) hours at his respective straight time rate of pay and for one hundred two (102) hours at his respective time and one-half rate of pay, Claimants R. Lindsay, J. Sebastian, Jr., C. Valentine and P. Jerdo shall now each be compensated for one hundred sixty-eight (168) hours at their respective straight time rates of pay and for ninety-four (94) hours at their respective time and one-half rates of pay, Claimant T. Aurilo shall now be compensated for one hundred sixty (160) hours at his respective straight time rate of pay and for ninety (90) hours at his respective time and one-half rate of pay, Claimant D. Therrien shall now be compensated for one hundred forty-four (144) hours at his respective straight time rate of pay and for ninety (90) hours at his respective time and one-half rate of pay, Claimant A. Menard shall now be compensated for one hundred thirty-six (136) hours at his respective straight time rate of pay and for sixty-eight (68) hours at his respective time and one-half rate of pay, Claimant T. Vincelette shall now be compensated for one hundred twelve (112) hours at his respective straight time rate of pay and for sixty-six (66) hours at his respective time and one-half rate of pay and Claimants K. Bigelow, L. Boyle and K. Sweatt shall now each be compensated for seventy-two (72) hours at their respective straight time rates of pay and for forty-four (44) hours at their respective time and one-half rates of pay.

- (8) As a consequence of the violations referred to in Parts (3) and/or (5) above, Claimants J. Keable, J. Reightmyer, D. Turner, T. Conley, C. Fountain and W. Barcomb Jr. shall now each be compensated for sixty-four (64) hours at their respective straight time rates of pay and for forty (40) hours at their respective time and one-half rates of pay, Claimants D. Therrien and K. Sweatt shall now each be compensated for thirty-two (32) hours at their respective straight time rates of pay and for twenty-four (24) hours at their respective time and one-half rates of pay and Claimants W. Gadway and L. Terrell shall now each be compensated for eight (8) hours at their respective straight time rates of pay and for four (4) hours at their respective time and one-half rates of pay.
- (9) As a consequence of the violations referred to in Parts (4) and/or (5) above, Claimants W. Barcomb, Sr., L. Terrell and B. Fleming shall now each be compensated for fifty-six (56) hours at their respective straight time rates of pay and for twenty-one (21) hours at their respective time and one-half rates of pay and Claimants C. Fountain, J. Sebastian, Jr. and C. Valentine shall now each be compensated for twenty-four (24) hours at their respective straight time rates of pay and for nine (9) hours at their respective time and one-half 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.

The claim in this proceeding arises from the Carrier's decision to outsource work for the construction of track, including the installation of switches, ties, crossings and related work for the Rouses Point Siding Extension. The instant

claim is considered separately and apart from two other claims – (Third Division Awards 42317 and 42318) – involving the Rouses Point Siding Extension.

The notice to contract in this claim is the same notice to contract issued in Award 42317 and the arguments presented, as well as the precedent relied on in this claim, are materially and substantively similar, if not identical, as those in that Award. For the reasons set forth in detail in that Award, the instant 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.