

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 42410
Docket No. MW-41720
16-3-NRAB-00003-100189

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 Employes Division -**
(**IBT Rail Conference**
(**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 (switch installation and related work) in the vicinity of Mile Post 13.1 on the Colonie Sub on September 30, October 1, 2, 3 and 6, 2008 (Carrier’s File 8-00653 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, Claimant D. Jordan shall now be compensated for forty (40) hours at his respective straight time rate of pay and for seventeen (17) hours at his respective time and one-half rate of pay, Claimants M. Berner, F. Lipka, J. Lavin, N. Smith and R. Gordon 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 Claimants R. Lindsay, T. Aurilio and J. Jackson shall now each be compensated for twenty-four (24) hours at their respective**

straight time rates of pay and for seventeen (17) 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.

On August 13, 2008, the Carrier issued to the Organization a notice of intent to contract 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 is 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 tack 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.”

Other than a different location and dates for work performed, the claim in this proceeding is similar, if not identical, in material and substantive terms to the notice and issues and arguments presented and addressed in Third Division Awards 42322 and 42323. For the reasons set forth in Awards 42322 and 42323, 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 31st day of October 2016.