

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42420
Docket No. MW-41865
16-3-NRAB-00003-120164**

The Third Division consisted of the regular members and in addition Referee George E. Larney when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Chicago
(and North Western Transportation Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated on September 21, 22 and 23, 2010 when the Carrier utilized outside forces (MLP Trucking) to perform Maintenance of Way and Structures Department work of transporting Carrier’s track material from the Kansas City Regional Track Warehouse to Proviso Yard in Northlake, Illinois and to Butler Yard in Milwaukee, Wisconsin and again on October 20 and 21, 2010 when the Carrier utilized outside forces (Belger Cartage) to transport Carrier’s track equipment from near St. Louis, Missouri to Proviso Yard in Northlake, Illinois (System File B-1001C-126/1544506).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper advance notice of its intent to contract out the above-referenced work or make a good-faith attempt to reach an understanding concerning such contracting as required by Rule 1 and Appendix 15.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant G. Dorn shall now “* * * be compensated at his respective rate of pay for an equal share of the five (5) days worked by Contractor forces performing the equipment and material transportation on the dates under claim.””**

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 presents a threshold issue wherein Carrier argues the Organization filed the claim under the wrong controlling agreement. Carrier notes correctly the claim was filed in accord with the C&NW Agreement when, more properly, the Organization should have filed the claim under the provisions of its Missouri Pacific Agreement. Carrier explained the basis for its position is that the claim identifies locations where the disputed work allegedly was performed by the outside forces yet said locations, specifically Kansas City, Kansas and St. Louis, Missouri, does not fall under the territory governed by the CNW Agreement. Rather, Carrier maintains the alleged work cited by the claim originated in the territory governed by the Missouri Pacific Railroad, thereby rendering the instant claim inapplicable to the aggrieved work and thus invalid. As such, Carrier submits the claim should either be dismissed or denied by the Board consonant with prior Board awards addressing the identical threshold issue.

The Organization contends Carrier's assertion the claim was filed under the wrong Agreement has no merit. Contrary to Carrier's position, the Organization maintains the disputed work in question was performed in connection with CNW work as the materials were moved to locations covered by the CNW Agreement.

It is clear to the Board that the respective positions addressing this threshold issue is akin to two trains in the night passing one another with neither train recognizing the other or paying any attention to each other. The Carrier's position is predicated on the territorial location where the work in question originated whereas the Organization's position is predicated on the territorial location where the work in question was moved to. We are persuaded that the arguments asserted before us

cannot be reconciled. Accordingly, therefore the Board rules to dismiss the instant claim.

AWARD

Claim dismissed.

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.