

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 42426  
Docket No. MW-41911  
16-3-NRAB-00003-120210

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

**PARTIES TO DISPUTE:** ( **Brotherhood of Maintenance of Way Employees Division -**  
( **IBT Rail Conference**  
( **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 when the Carrier assigned outside forces (R. J. Corman) to perform Maintenance of Way and Structures Department work (remove drift wood from river bridge) at Mile Post 417.8 near Trenton, Missouri on November 29, 30, December 1, 2, 3, 4, 5 and 6, 2010 (System File G-1101C-51/1548295 CNW).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with an 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, Claimants J. Short, R. Rainey and J. Lanham shall now “\* \* \* each be compensated for an equal share of 144 hours of straight time and 96 hours of overtime, at the applicable 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.

Inherent in the instant claim is the Organization's assertion that the identified work performed by the contractor employees is scope covered work pursuant to the provisions of Rule 1 of the Controlling November 1, 2011 Agreement and, as such, the named Claimants are entitled to be compensated for the exact number of hours worked by the outside forces to complete the project on the grounds that those hours represented a loss of work opportunity for the Claimants.

In pertinent part, Rule 1(B) reads as follows:

**“Employees included within the scope of this Agreement in the Maintenance of Way Structures Department shall perform all work in connection with the construction, maintenance, repair and dismantling of tracks, structures and other facilities used in the operation of the Company in the performance of common Carrier service on the operating property \* \* \*.”**

The Organization explains there are hundreds of bridges on Carrier's property that its Bridge and Building (B&B) forces repair and maintain on a regular daily basis. Among the maintenance work performed is to regularly inspect and monitor drift and debris accumulations, most typically drift wood and other materials that travel along the waterway and on the various bridge structure supports and abutments, and to take remedial action of removing drift accumulation when necessary.

In the case at bar, the Organization has proffered sufficient evidence to prove that the work of removing drift wood accumulations from Carrier's bridges is scope covered work but was unable to sufficiently prove that the identified work was performed by the outside forces on the claim dates in question on the Carrier's operating property as qualified by Rule 1(B). In failing to bear this burden of proof, the Organization was unable to successfully rebut Carrier's position that the claimed

scope covered work of removing the driftwood performed by the outside forces was work performed from a county road which was not on Company property.

Due to the Board's inability based on the record evidence in its entirety before it to discern the truth of either parties' position relative to the asserted claim, the Board has no other option but to rule 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.