

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43038
Docket No. MW- 43775
18-3-NRAB-00003-160592**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(Kansas City Southern 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 (BMW Contracting) to perform Maintenance of Way and Structures Department work (install spikes and assist a surface production gang) at various locations on the Meridian Subdivision commencing on February 28, 2014 and continuing (System File C 14 02 28/K0414-4228 KCS).**
- (2) The Agreement was further violated when the Carrier failed to notify the General Chairman in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than fifteen (15) days prior thereto regarding the aforesaid work or to make a good-faith effort to reduce the incidence of subcontracting and increase the use of its Maintenance of Way forces as required by Addendum No. 9 and the December 11, 1981 National Letter of Agreement.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants D. Wicks and D. Young shall each ‘... be compensated ten (10) hours per day regular rate of pay, which at the date of this claim is fifty-nine (59) days which totals \$15186.60 for the Trackmen continuing forward at \$257.40 per day from April 28, 2014 plus late payment penalties based on a daily periodic rate of .0271% (Annual Percentage Rate of 9.9%) calculated by multiplying the balance of the claim by the daily**

periodic rate and then by the corresponding number of days over sixty (60) that this claim remains unpaid.”

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 Organization asserts that the Carrier contracted with BMW Contracting to install spikes and assist a surface production gang at various locations on the Meridian Subdivision commencing on February 28, 2014 and continuing. The Carrier responded to the claim asserting that the Claimants' work performance was impacting the production of SPG Gang 500 and as a consequence they were moved to other work. With respect to contracting out, the Carrier asserted that its records showed no work was performed by the contractor for the dates and locations in the claim. The Carrier's assertion concerning the lack of contracting out for the dates and locations was not refuted. Without a showing from the Organization that the disputed work was contracted out on the dates and locations set forth in the claim, the Organization has not carried its burden in this case to show that the Carrier improperly used outside forces to perform work.

AWARD

Claim denied.

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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 2nd day of May 2018.