

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 43826
Docket No. MW-44443
19-3-NRAB-00003-170576

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp when the award was rendered.

(Brotherhood of Maintenance of Way Employes Division –
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Kansas City Southern Railway Company
Former SouthRail Corporation

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when, commencing on October 6, 2015 and continuing through December 3, 2015, the Carrier assigned outside forces to perform Maintenance of Way work (installing ties) between Mile Posts 140 and 180 on the Artesia Sub (System File C 15 10 06/K0415-6575 SRL).
- (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 and when it failed to assert good-faith efforts to reduce the incidence of subcontracting and increase the use of Maintenance of Way forces as required by the Side Letter of Agreement dated February 25, 1988 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 J. Comer, R. Green, T. Outlaw, A. Clark, J. Dempsey, M. Moss, J. Leach, L. Baldrige, M. Moss and V. Halbert shall each ‘... be compensated ten (10) hours regular rate of pay for thirty-four (34) days, which totals \$9115.40 for the Laborers 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.’ (Emphasis in original).”

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 contends that between October 6, 2015, and December 3, 2015, the Carrier violated the parties' Agreement when it permitted outside forces (Trak Time) to install ties between Mile Posts 140 and 180 on the Artesia Subdivision. Installing ties is work that has historically, traditionally, and customarily been assigned to and performed by the Carrier's Maintenance of Way forces. In addition, the Carrier failed to comply with the advance notification and conference provisions of the Agreement regarding its intention to contract out this work, nor did it justify the reasons for contracting out this unit work.

The Carrier responded that it had given the Organization notice, on December 11, 2014, in its Annual Notice of Intent to contract out work for the following year. The Annual Notice of Intent lists the contractors the Carrier plans to use, with a description of the type of work it plans to have the contractor perform. On the same date, December 11, 2014, the Carrier sent the Organization its 2015 System Production Gang Schedule, which identifies the time frames where the Gang will move during the year, with modifications depending upon climate and other factors that might affect the schedule. The schedule was subsequently revised on June 19, 2015. In

addition, the Carrier has a longstanding practice of using contractors to perform this type of work.

Carrier records indicate that Trak Time did not perform the work alleged in the claim. In light of that fact, the Organization has not met its burden of proof and this particular claim on these facts shall be 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 4th day of September 2019.