

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43827  
Docket No. MW-44444  
19-3-NRAB-00003-170578**

**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 MidSouth Rail Corp.**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when, on February 19 and 20, 2016, the Carrier assigned outside forces to perform Maintenance of Way work (rail installation) at or near Mile Post 5 on the Meridian Sub (System File C 16 02 19 (014)/K0416-6702 MSR).**
- (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 10, 1986 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. Downs, J. Sumrall, M. Evans, Jr., J. Smith, H. Fountain, M. Harper, D. Norman, W. Haire, L. Hannibal, A. Agent, D. Ewings, R. Hunter, R. Reed, W. Patrick, T. Outlaw, W. Lacey, A. Young, O. Ellis, H. Dora, R. Green, J. Jordon, R. Brown, W. Davis and J. White, Sr. shall each ‘... be compensated ten (10) hours regular rate of pay for one (1) day(s)**

which totals \$304.30 for the Foreman, \$283.5 for the Machine Operators, and \$268.10 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 alleges that the Carrier violated the parties' Agreement when it assigned outside forces (R. J. Corman) to install rails at or near Mile Post 5 on the Meridian Subdivision on February 19 and 20, 2016. There can be no doubt that the work at issue is reserved to employees in the Maintenance of Way and Structures Department; it has been customarily and historically assigned to and performed by the Carrier's own MoW forces. The Carrier further violated the Agreement when it failed to comply with the advance notification and conference provisions of the Agreement regarding contracting and when it failed to provide adequate justification for contracting the work.

According to the Carrier, it sent to the Organization its Annual Notice of Intent to contract out work for 2016 on December 15, 2015. The parties met in conference but no agreement or understanding was reached, and the Carrier proceeded with its intent to contract the work set forth in the Notice.

Regarding this specific case, there are no Carrier records that indicate that the contractor performed the work cited 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.