

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44715  
Docket No. MW-45328  
22-3-NRAB-00003-190158**

**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: (**

**(The Kansas City Southern Railway Company  
(former MidSouth Rail Corporation)**

**STATEMENT OF CLAIM:**

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

- (1) The Agreement was violated when, on July 10, 11, 12, 13 and 14, 2017, the Carrier assigned or otherwise allowed outside forces to perform Maintenance of Way work (cribbing mud out of tracks and ties) at Mile Post 83.7 and between Mile Posts 90 and 92 on the Meridian Sub (System File 17 07 10 (074)/K0417-7434 MSR).**
- (2) The Agreement was violated when, on July 17, 18, 19, 20 and 21, 2017, the Carrier assigned or otherwise allowed outside forces to perform Maintenance of Way work (cribbing mud out of tracks and ties) at Mile Post 83.7 and between Mile Posts 88 and 92.2 on the Meridian Sub (System File 17 07 17 (075)/K0417-7435).**
- (3) The Agreement was further violated when the Carrier failed to comply with the Agreement’s advance notification and conference provisions in connection with the Carrier’s plans to contract out the aforesaid work referenced in Parts (1) and/or (2) above and when it failed to assert good-faith efforts to reduce the incidence of subcontracting and increase the use of its 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.**

- (4) As a consequence of the violations referred to in Parts (1) and/or (3) above, Claimant M. Evans, Jr. shall now ‘... be compensated eight (8) hours per day at the regular rate of pay for five (5) days which totals \$1109.20 for the Machine Operator 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).
- (5) As a consequence of the violations referred to in Parts (2) and/or (3) above, Claimants M. Evans, Jr and T. Outlaw shall now each ‘... be compensated eight (8) hours per day at the regular rate of pay for five (5) days which totals \$1109.20 for the Machine Operators 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.

There is no dispute that in the past the Carrier has subcontracted the work involved in this dispute and that, in the past, the covered employees have also performed the work. This is a mixed-practice case. The question in this case is sufficiency of notice under the governing Agreement language.

By letters dated December 13, 2016 and August 4, 2017, the Carrier sent annual notices of subcontracting to the Organization, both of which listed contractors and type of work to be performed on the Carrier's properties during 2017. Carrier Exhibit A at 12-14, 16-18. By letter dated March 24, 2017, the Carrier supplemented its notice to the Organization with the following (Carrier Exhibit A at 15):

**“Without prejudice that the work described below is not covered by the Scope Rule of the current Agreements and pursuant to past practice of contracting, this is advance notice as described in the Letter of Understanding dated February 10, 1986 for the Mid South, of the Carrier's intent to contract the work set forth in this Notice of Intent to Contract Services. The work contemplated below is necessary as identified by items one, two and three of the agreement.**

<b>Project Name:</b>	<b>MSLLC Ties and Rail Relay</b> <b>Install approx. 60,000 cross ties, switch ties installation, road crossing rehab, relay approx. 65,000 linear feet rail, tie &amp; OTM pickup &amp; distribution, undercutting,</b>
<b>Type of Work:</b>	<b>surfacing, bridge repair and rehab</b>
<b>Type of Equipment:</b>	<b>Spike pullers, spikers, rail laying equipment, pettibones, rail heaters, tie plugging machines, tampers, ballast regulators, grapple trucks, backhoes, dump trucks, trackhoes, rail welding trucks, crew trucks and tools, tie inserters, rail anchor machines</b>
<b>Contractors:</b>	<b>Approximately seventy-five (75)</b>
<b>Duration:</b>	<b>Approximately seven (7) weeks</b>
<b>To begin:</b>	<b>Approximately April 18, 2017</b>
<b>Working time:</b>	<b>10 hrs per day 4+ days per week or 8 hrs per day 5+ days per week</b>
<b>Location:</b>	<b>MSLLC - Vicksburg and Meridian Subdivisions</b>
<b>Contractor:</b>	<b>TBD</b>

KCS Employees: Yes

There are no furloughed employees on the Mid South and all other employees are engaged in other on-going projects. The Carrier does not have the equipment or available manpower to perform these projects in a timely manner.

While standing alone, the Carrier's annual notice of subcontracting which only gives contractor names and type of work to be performed is not sufficient to meet the notification requirements of the governing Side Letter of Agreement, the supplemented detailed information given to the Organization in the March 24, 2017 letter (which was given more than 15 days prior to the work being performed) satisfies the Carrier's notification requirements under the Side Letter. See Third Division Award 44709 and awards cited:

“(2) The Carrier's giving supplemental notification to the Organization of the type of work, the type of equipment, the length of the project, its projected start date, and its location along with stated reasons for subcontracting satisfies the Carrier's notification obligation.”

Based on the above, the claim 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 6<sup>th</sup> day of May 2022.