

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44725  
Docket No. MW-45594  
22-3-NRAB-00003-190487**

**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 SouthRail Corporation)**

**STATEMENT OF CLAIM:**

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

- (1) The Agreement was violated when, commencing on January 24, 2017 and continuing through February 28, 2017, the Carrier assigned or otherwise allowed outside forces to perform Maintenance of Way work (distribute materials) at or near Mile Post 3.4 and various locations between Mile Posts 278 and 14 [System File 17 01 24 (011)/K0417-7118 SRL].**
- (2) The Agreement was further violated when the Carrier failed to properly 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 work referred to in Part (1) 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 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, Claimant J. Comer shall now be compensated ten (10) hours at the regular rate of pay for twenty-six (26) days which totals seven thousand three hundred seventy-one dollars (\$7,371.00) 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.”

**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.

For reasons discussed in Third Division Award 44724, the Organization's statements supporting the claim identify "Continental Rail" as the contractor performing the work (Attachment Nos. 1 and 2 to Employees' Exhibit A-1) while the Carrier contends in its May 17, 2018 letter that "Carrier information does not indicate that Continental Rail performed the work alleged in the claim" (Carrier Exhibit A at 9). As discussed in detail in Third Division Award 44724, those are irreconcilable facts which this Board cannot sort out and which cause this Board find that the Organization has not carried its burden.

Moreover, two of the statements relied upon by the Organization assert that work was performed by Continental Rail in February 2016 which is inconsistent with the claim which asserts the work was performed in February 2017, which causes more irreconcilable facts and also supports the Carrier's assertion that the claim is untimely.

This 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.