

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44733
Docket No. MW-45646
22-3-NRAB-00003-190544**

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 the Carrier assigned or otherwise allowed outside forces to perform Maintenance of Way work (install ties) at Mile Post 103.2 on the Meridian Subdivision on March 12 and 13, 2018 [System File 18 03 12 (21)/K0418-7650 MSR].**
- (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 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, J. Smith, M. Harper and H. Fountain shall now each ‘... be compensated eight (8) hours per day at the regular rate of pay for two (2) days which**

totals \$486.88 for the Foreman, \$453.60 for the Machine Operator, and \$428.96 for the Laborers.’ (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 letter dated December 15, 2017, the Carrier sent annual notice of subcontracting to the Organization, listing contractors and type of work to be performed on the Carrier’s properties. Carrier Exhibit A at 8.

There is no timely supplemental notification to the Organization in this record further detailing the work alleged to have been performed.

Standing alone, the annual notification to the Organization is insufficient for the Carrier to meet its notification obligations because it is too broad and generic to serve the purpose of the required notice. Third Division Award 43834. See also, Third Division Award 44709:

“(1) Standing alone, annual notice given by the Carrier to the Organization of its intent to subcontract work which just lists

contractors and types of work to be performed is insufficient notification to the Organization.”

We note that the Carrier has provided a copy of a notice dated April 6, 2018 giving otherwise necessary detail and reasons for subcontracting that would ordinarily satisfy its notice obligations. See Carrier Exhibit B at 23. However, that April 6, 2018 notice was given after the work commenced on March 12 and 13, 2018 and was therefore not timely advance notice as required by the governing Agreement language.

Factual support for the claim is found in statements provided by the Organization. Attachment No. 1 to Employees’ Exhibit A-1.

The Carrier does not dispute that the work was performed as alleged in the claim. See Carrier letter dated October 1, 2018 (“... Carrier records indicate the contractor performed the work noted in the claim.”) Carrier Exhibit A at 16.

The Organization has therefore shown that the Carrier subcontracted work on dates and location as specified in the claim without sufficient notice as required by Third Division Award 43834 to which we defer. The claim therefore has merit.

As a remedy, the Claimants shall be entitled to compensation for the hours worked by the contractors on the dates alleged in the claim. Third Division Award 43834. See also, Third Division Award 44709:

“(6) With respect to remedies for demonstrated violations, the Claimants shall be entitled to compensation for the hours worked by the contractors on the dates when the contractors were acknowledged to be working.”

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make

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the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 6th day of May 2022.