

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44735  
Docket No. MW-45649  
22-3-NRAB-00003-190573**

**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) between Mile Posts 1 and 2 on the Gulfport Subdivision at the Dupont Lead on March 21, 24, 27 and 31, 2017 [System File 17 03 21 (033)/K0417-7261 MSR].**
- (2) The Agreement was violated when the Carrier assigned or otherwise allowed outside forces to perform Maintenance of Way work (install ties) between Mile Posts 166 and 168 on the Vicksburg Subdivision near East and West Bossier on March 24, 25, 26, 27 and 28, 2017 [System File 17 03 24 (032)/K0417-7260].**
- (3) 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 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, Claimants J. Downs, L. Moran and L. Lucas shall now each ‘... be compensated ten (10) hours at the regular rate of pay for five (5) day(s) which totals \$1417.50 for the Machine Operators, and \$1340.50 for the Laborers 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 J. Downs, R. Colvin, L. Ludlow, O. Hall and W. Sneed shall now each ‘... be compensated ten (10) hours at the regular rate of pay for five (5) day(s) which totals \$1417.50 for the Machine Operators, and \$1340.50 for the Laborers 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 letter dated December 13, 2016, 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 16.

There is no supplemental notification to the Organization in this record further detailing the work alleged to have been performed by contractors. We note, however, that there is a supplemental letter from the Carrier in the record dated March 24, 2017 detailing work to be performed by contractors on Vicksburg and Meridian Subdivisions commencing April 18, 2017. Carrier Exhibit B at 23. That letter is not timely for subcontracted work that was performed in March 2017 as alleged in the claim.

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.”

Factual support for the claim comes from statements asserting that on March 21-24 and 27-31, 2017, ZA Contractors installed ties on the DuPont Lead, between MP 1.0 and 2.0 on the Gulfport Subdivision (Attachment No. 1 to Employees' Exhibit A-1) and on March 24-28, 2017, CW&W installed ties at mileposts 167.7 and 166.5 on the Vicksburg Subdivision (Attachment No. 1 to Employees' Exhibit B-1).

According to the Carrier in its July 19, 2017 letter (Carrier Exhibit A at 14):

“(d) ... Carrier records confirm that contractor ZA Contractors performed the work noted in the claim for a total of 96 hours (32 hours each).”

Further, in the Carrier's July 19, 2017 letter, the Carrier also states (id. at 13-14):

“(c) ... Carrier records confirm that contractor CW&W performed the work noted in the claim.”

The Organization has therefore shown that the Carrier subcontracted work on dates and locations 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 for dates not disputed by the parties. 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 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 6<sup>th</sup> day of May 2022.