

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44743
Docket No. MW-45039
22-3-NRAB-00003-210496**

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 Gateway Western Railway Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when, on November 16 and 17, 2016, the Carrier assigned or otherwise allowed outside forces to perform Maintenance of Way work such as unloading rail at Mile Posts 323.5, 323.7, 286 and 283 and installing ties at/or in-between Mile Posts 287.2 to 286 on the Roodhouse Sub [System File C 16 11 16 (075)/K0417-7066 GAT].**
- (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.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants M. Guthrie, B. Johnson and R. Given shall each ‘... be compensated eight (8) hours regular, and two (2) hours at the time and one-half rate of pay for two (2) days which totals \$610.06 for the Machine Operator, and \$552.86 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.

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.

The Carrier’s December 15, 2015 annual notice of subcontracting to the Organization lists Musselman & Hall as a contractor to perform general track maintenance, earthwork and excavation and general bridge maintenance in 2016. Carrier Exhibit A at 10. That annual notice of subcontracting is insufficient to meet the requirements of the governing Side Letter of Agreement. Third Division Award 44709 and awards cited. There is no further written supplemental notice from the Carrier to the Organization identifying where the proposed contracting out will take place or when it will occur but there must be a bare minimum of those details to identify the proposed contracting out project or projects. 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.”

According to the Carrier, “Carrier records confirm the presence of contractor Musselman & Hall performing the work noted in the claim” [November 16 and 17, 2016] as well as at the location indicated in the claim, which corresponds to employee statements to that effect. Carrier Exhibit A at 4-5, 7.

The claim therefore has merit.

With respect to the remedy, again see 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 6th day of May 2022.