

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45012
Docket No. MW-46414
23-3-NRAB-00003-210188**

The Third Division consisted of the regular members and in addition Referee Barbara C. Deinhardt when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Hasse Construction) to perform Maintenance of Way Department work prepping and finishing concrete at the Turntable in Hammond, Indiana on the East Seniority District on September 18, 2019 through September 23, 2019 (System File D19IHB1-12 IHB).**
- (2) The Agreement was violated when the Carrier assigned outside forces (J.V. Crane & Engineering) to perform Maintenance of Way Department work dismantling and removing the existing turntable and constructing and installing the new turntable in Hammond, Indiana on the East Seniority District on August 27, 2019 through October 10, 2019 (System File D19IHB1-13).**
- (3) The Agreement was further violated when the Carrier failed to notify the General Chairman of its intent to contract out the work referred to in Parts (1) and/or (2) above and when it failed to make a good-faith effort to reduce the incidence of contracting out scope covered work and increase the use of its Maintenance of Way forces as required by the Scope Rule 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 S. Gengnagel, J. Tuttle and A. Soto shall now each ‘... be compensated for one hundred-twenty-eight hours (128) of overtime for work performed by Hasse Construction beginning September 18, 2019 thru and including September 23, 2019 to be**

divided equally and proportionally between Claimants at their applicable overtime rates of pay.’

- (5) As a consequence of the violations referred to in Parts (2) and/or (3) above, Claimants S. Gengnagel, J. Tuttle and A. Soto shall now each ‘... be compensated for one thousand-eighty (1080) hours of overtime for work performed by J.V. Crane & Engineering beginning August 27, 2019 thru and including October 10, 2019 to be divided equally and proportionally between Claimants at their applicable overtime rates of pay.’”

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.

On January 19, 2019, the Carrier accepted a proposal from JV Crane to dismantle, remove, construct and install a turntable at the Hammond Yard. A Notice was sent to the General Chairman on January 29, 2019, notifying the Organization of the intent to subcontract. The Organization requested a conference, which was held on February 5, 2019. The Carrier explained the job and why it was necessary to subcontract the work. At the conference, the Carrier agreed that part of the job—work related to deck, walkway and handrail installation—would be done by the Organization. The Carrier indicated its intent to proceed with the project. After the new turntable was constructed, the contractor discovered a need to fortify the concrete supports for the turntable before it was installed. A second contractor was retained to perform this work on an expedited basis.

The Organization argues that the work performed by the outside contractors was work customarily assigned to and performed by Organization members. Claimants were fully qualified and capable of performing this work. The employees of the outside forces used common, ordinary B&B Department equipment and skills

to accomplish the work. The Carrier failed to make a good faith effort to reduce the incidence of subcontracting.

According to the Carrier, the Scope Rule only includes installing, maintaining and repairing turntables, not dismantling, removing or constructing. Therefore, those parts of the claimed work are not covered. As to the installation, the Carrier asserts that Claimants do not possess the skills and qualifications necessary to install such a massive project. While the Organization states that one of the Claimants has a crane operator license, the Claimant does not have the license or ability to operate the type of crane needed to lift such a heavy object. Nor does the Carrier even own that type of crane. In addition, the construction warranty stated that the turntable had to be installed by Crane employees.

As for the concrete work. The Carrier contends that it is part of the installation project and so separate notice was not required. Nor is the Carrier required to piecemeal the project and assign part to the Carrier employees.

Upon a review of the record as a whole, the Board finds that the Organization has met its burden of proof to the extent that its members should have been assigned the deck, walkway and handrail work it agreed during the conference on the subcontracting to assign to Organization members. We find therefore that the Carrier should pay Claimants 16 hours at the straight time rate. The Organization did not meet its burden of proving that Claimants possessed the skills and qualifications to perform the balance of the job.

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 3rd day of August 2023.