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**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13900
Docket No. 13770
06-2-05-2-21

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

(Brotherhood Railway Carmen Division of TCU

PARTIES TO DISPUTE: (

(The Montana Rail Link, Inc.

STATEMENT OF CLAIM:

- “1. That the Montana Rail Link violated the terms of our current Agreement, in particular Craft Specific Provisions for the Brotherhood Railway Carmen, Article VII(a) – Classification of Work, and Articles I and II and Exhibit A., paragraph C., of the Montana Rail Link Master Agreement, when the carrier assigned strangers to the Agreement to perform scope work on or about February 23, 2004.
2. That, accordingly, the Montana Rail Link, (MRL) be ordered to compensate Laurel, Montana Carmen R. Hettinger, C. Southworth, T. Noble, H. Schober, and L. Knaub, eight (8) hours pay each at the applicable overtime rate for the February 23, 2004 violation, when the Carrier violated the controlling Agreement by enlisting the services of strangers to the agreement to perform Carmen’s work in the Laurel, Montana train yard facility.”

FINDINGS:

The Second 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.

The Claimants, R. Hettinger, C. Southworth, T. Noble, H. Schober, and L. Knaub, are Carmen in the employ of the Carrier assigned to the Laurel, Montana train yard and repair track facility. On February 20, 2004 eight (8) freight cars derailed on the west end of tract #203 in the Laurel, Montana train yard. Some of the Claimants were assigned to complete the re-railing of four (4) of the eight (8) cars that day. The remaining four (4) cars remained derailed for two days. On Sunday Carman were sent to re-rail the remaining cars. Two boxcars were re-railed and two tank cars remained derailed. On Monday, February 23, 2004, the two remaining tank cars were re-railed by an outside contractor. The Organization made a claim for the work.

The Organization argued that the Carmen were qualified to perform this work. The equipment and the time were also available on the dates in question. The Carrier violated Article VII of the Collective Bargaining Agreement and also Exhibit A of Paragraph C. There was nothing prohibiting the Carmen from successfully re-railing six of the eight cars, and the Carmen could have re-railed the remaining two cars with Carrier equipment. It is true that under certain circumstances the Carrier may utilize outside contractors. The Organization, however, argued that the Carrier failed to use a "reasonable effort" to assign this work to its own employees. There must be some evidence that the work could not be completed with the Carrier's equipment and manpower. The Organization would note that the position of the cars did not require that they be lifted entirely in order to perform the re-railing process. The Carrier never refuted the employees' position that the re-railing could have been done by Carrier employees under the circumstances of this case.

The Carrier, a 19 year old railroad, argued that, in exchange for recognizing all of the organizations, the Carrier obtained flexibility in its operations. There is nothing in the Agreement that requires the Carrier to use Carmen to perform re-railing work. There are no provisions prohibiting the contracting out of any mechanical department work. In fact, the Agreement expressly allows the Carrier to engage contractors including the work described herein. The burden of this claim rests squarely with the Organization. This work is not reserved exclusively for Carmen. Articles I and II are inapplicable because they apply to wrecking service performed outside of the yard limits and/or emergency road service. The facts of this case show that the Carmen did try to re-rail the last two tank cars but were unsuccessful. The Carrier may contract out work at its sole discretion. The agreements are common with the six other unions representing non-operating craft employees. In this matter the Carrier did use reasonable efforts to utilize its own employees to perform the re-railing work. It was only when the Carrier determined that the Carmen could no longer perform this work properly that an outside contractor was called in. The Carrier merely exercised its discretion contained in the Collective Bargaining Agreement. The Carrier used reasonable discretion to determine that its equipment was neither efficient nor safe for the work at hand.

Upon complete review of the evidence, the Board finds that the wording of the various clauses in the Labor Contract shows that the Carrier must have some basis for its decision to contract. This is not a unilateral right to provide work of this nature to an outside contractor just because the Carrier feels like doing so. The Carrier must have some showing. It cannot do as it pleases. Rules must have some meaning. The Carrier gave some reasoning in its Exhibit A, Page 9. This was disputed by the Organization. The record shows, however, that the Organization did not put enough detail into this matter to show that they could perform the work in a safe and efficient manner. The Carrier did make an effort to utilize its own employees. The record shows that this is the first time that the Organization has challenged the Carrier in this manner. In the past the Parties have been able to work out their problems locally. This should have happened in this case, also. The Board finds that, in this specific instance, the Organization did not provide enough information in the record to prove its case and, therefore, the claim shall be denied.

Claim denied in accordance with the Findings.

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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 Second Division

Dated at Chicago, Illinois, this 7th day of July 2006.