

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 13062
Docket No. 12996
96-2-95-2-13

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

(International Association of Machinists
(and Aerospace Workers
PARTIES TO DISPUTE: (
(Meridian & Bigbee Railroad Company

STATEMENT OF CLAIM:

"1. That the Meridian & Bigbee Railroad Company improperly subcontracted Carmen work to GE RailCar of Dothan, AL, in violation of the April 1, 1951 Agreement, as amended and Scope Rule - Article - VI, as amended, but not limited thereto.

2. That accordingly, the Meridian & Bigbee Railroad Company be ordered to pay Carmen W. J. Brown, G. O. Frazier, G. L. Tew and E. Blanks thirty (30) hours each at the straight time rate, for a total of (120) hours at the straight time rate."

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.

By letter dated December 14, 1992, the Organization filed claim alleging Carrier's violation of the Agreement in sending Carmen's work to GE RailCar. The Organization pursued this claim on property listing the damage repaired, directing attention to Article VI (Scope) arguing past practice and supporting the claim with a signed statement.

The Carrier steadfastly denied any Agreement violation. It held that the work performed on MB5028 was contracted out as had been consistent practice on this property when heavy repairs were needed. The Carrier argued that it was not prohibited from such action and had done so for years.

The Board makes the following preliminary observations. The parties should know that the record submitted must clearly identify the on-property issues. This record is extremely nebulous. Among material clearly not exchanged on the property are prior settlements. All arguments and documents that were not exchanged while the dispute was on property have been put aside as new and too late for the Board's consideration.

We carefully sifted through issues of timeliness, practice, settlements, signed Agreements, applicability of National Agreements and the doctrine of laches, among other arguments raised on property, ex parte and before this Board. The Board makes this determination.

The claim is proper. There is no defense on property or discussion, either to judge otherwise or to dismiss under the applicable Agreement. The Organization had the burden of demonstrating by Agreement and evidence that the work disputed belonged to the Claimants. Article VI (Scope) states:

"All inspections, servicing, maintenance, repair modifications and overhauls to equipment, locomotives and freight cars, including electrical work shall be performed by the employees of the Carrier subject to this Agreement represented by the International Association of Machinists and Aerospace Workers." (emphasis added)

The Organization submitted a signed statement contesting the Carrier's assertions that the work was not historically performed on the property. The Carrier's denials are unpersuasive. Further, the Carrier's arguments that such action is an industry wide practice, that there is no Agreement provision prohibiting subcontracting of "heavy repairs" and that it will not subcontract if it results in furlough, miss the mark. Under the Scope Rule, supra, there is no language whatsoever providing for exceptions due to industry practice, heavy repairs or furlough. Article VI is clear that "all...repair...shall be performed by the employees of the Carrier...."

Accordingly, the Organization met its burden of proof. The claim is sustained.

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AWARD

Claim sustained.

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 Second Division

Dated at Chicago, Illinois, this 25th day of September 1996.