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**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13174
Docket No. 13061
97-2-95-2-84

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig 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 Custom Car Corp. of Whynot, MS, in violation of the October 5, 1993 Agreement, as amended and especially appendices 1 and 8, but not limited thereto.

(2) That, accordingly, the Meridian & Bigbee Railroad Company be ordered to pay Carmen J.W. Brown, G.O. Frazier, G.L. Tew and E. Blanks forty (40) hours each at straight time rate, for a total of (160) 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.

On August 25, 1994, the Organization submitted a claim, asserting that the Carrier, in July 1994, subcontracted with the Custom Car Corporation to inspect and restencil forty (40) chip hopper cars which the Carrier had leased.

The essence of the Carrier's denial of the claim is that it leased the forty chip cars from Railcar LTD of Atlanta, Georgia, not the Custom Car Corporation. Therefore, because the work at issue was performed before the chip cars came under the Carrier's control, the claimants were not entitled to the work.

In its submission to the Board, the Carrier provided a copy of its lease agreement with the Railcar LTD and its Certificate of Acceptance of the forty cars, dated October 20, 1994. These two documents were not provided during the on-the-property handling of this claim. Therefore, these would not normally be considered by the Board. However, the Carrier, in its denial letter of November 10, 1994 to the Organization, offered to show these documents to the Organization. While this offer was not accepted at the local level, the Board, on the basis of the Carrier's action, does accept the documents as being properly before it for consideration with the remainder of the documents in the file.

The evidence shows that the Carrier leased the forty cars from Railcar LTD. There is no evidence in the file that the Carrier subcontracted the work in question to the Custom Car Corporation. The record also shows that the cars were accepted by the Carrier on October 20, 1994. Many arbitral decisions have held, when addressing the questions of work performed on leased equipment, that the equipment first must be within the control of the Carrier. For example, see Award 63 of SBA No. 570, which in pertinent part stated:

"In order for the Carrier to be able to engage in subcontracting it must first legally own, or have dominion over the subject matter ... of the subcontract. The Carrier cannot legally subcontract a vehicle to which it has not title."

Therefore, until the leased equipment comes under the control of the Carrier, the work does not belong to the Organization. Last, no evidence was produced on the property of any past practice that would convey rights to the Organization for work on equipment not under the control of the Carrier.

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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 29th day of October 1997.