Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13038
Docket No. 12978
96-2-94-2-134

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

PARTIES TO DISPUTE: (International Association of Machinists
(and Aerospace Workers
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"1. The Consolidated Rail Corporation violated the Rules of the Controlling Agreement of May 1, 1979, and particularly Rules 2-A-1, 2-A-4, 5-F-1, Scope, Appendix 'B', Appendix 'C', and Past Practice and Customs.

2. Accordingly, the claimant is entitled to the remedy as requested. Additional 152.5 hours pay at the applicable straight time rate of $14.98 per hour, total of $2284.45."

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 waived right of appearance at hearing thereon.

Carrier purchased replacement gears for a crane in June 1992 from an outside manufacturer. The Organization alleges violation of the Agreement in that the work was subcontracted, rather than performed by Machinists. It argues that by practice and Rule, this work belongs to Machinists. The contracting out violated the Scope Rule and Appendix 'F', Farming out of Machinist Work.

According to the Organization, the Carrier's practice has always been to inform the Organization of work to be contracted out. The Organization would review the work and if it could not be performed in-house, it would sign off on the PA-9 form. In this instant case, the Organization argues that the Carrier came to the Machinist for the necessary prints to cut the gears. The gears in dispute had been produced in-house before. The Organization maintains that the Claimant was qualified, the work was his to perform and the Carrier contracted out without a prepared PA-9 form or Agreement support.

The Carrier argues that these gears have never been work performed by Machinists. It maintains that they could not be manufactured due to the lack of flame hardening equipment to heat treat the gear teeth. The Carrier maintains that it was within its Agreement rights, particularly Article III(g) of the Scope Rule to purchase new gears from an outside contractor. The production of gears would entail higher cost than the purchase of new gears. The Carrier states that there is nothing in the Agreement "prohibiting the Corporation from purchasing new equipment." It further argues that the claim presented to this Board has been amended and should be dismissed.

The Board fully reviewed the extensive record in this dispute. The procedural issue has been studied and is rejected. There is no substantial variation between the claim progressed on the property and the claim before this Board. The only change is a reduction in requested compensation from the purchase price of the parts to the straight time hours in producing the parts by the Machinist. There is no significant difference in that all the same issues, arguments and Rules discussed during the progression of this claim on the property remain unaltered.

On the merits, the ultimate resolution of this claim rests with the Board's determination of whether the Carrier's purchase violated the Agreement. The burden of proof lies with the Organization. It alleges on the property that Machinists were capable of producing these parts. The probative evidence is that work like that disputed, but not the actual work disputed, has been performed. An unsigned letter and other evidence suggest such ability.

The Board considered each allegation and supporting evidence. It is not persuaded that a violation occurred. This Agreement includes exceptions to the Scope Rule. Article III(g) states in part:

> "Procurement from manufacturers or suppliers of ... components or parts of equipment either assembled or unassembled; provided, however, that the Company will not procure rebuilt or reconditioned components or parts or assemblies thereof from outside concerns which do not employ bona fide union labor or unless such components or parts ... can only be produced in its own shops at greater cost ...."

The Board finds the work an exception. The Carrier stated on the property that it ordered "new" parts. It asserted that it "has never manufactured these type of gears in house." After reviewing the extensive material on heat treatment, we are persuaded that the Carrier's position has merit. The Carrier stated that it "does not possess the necessary flame hardening equipment to heat treat the gears for strength." Therefore, as the cost of piecemealing the process "would have far exceeded the expense of purchasing new gears," it purchased new gears. There is a lack of probative evidence to negate these assertions.

The Organization on the property did not allege that the work performed was "rebuilt" or "reconditioned." The Carrier's defense was that the work had not been previously performed, could not be performed and it therefore purchased "new" parts. The specification came from prints on file, but the parts were new. The costs asserted by the Organization were not for the cost of producing the gears, but for those costs associated only with machining gears, before the gears would have had to be sent out for additional work. And further, the evidence does not demonstrate that the cost of blanks, manufacturing on the property and flame hardening would have been less than the purchase of the new parts.

Accordingly, under the instant facts, the Carrier has not violated the Agreement. There is a lack of proof that these parts were previously produced on the property or could be produced on the property. There is insufficient proof of a prima facie case that the estimated full costs of production would have been less than the purchase of new parts. There is also nothing in the Agreement denying the Carrier the right to purchase new parts.

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 21st day of August 1996.