

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26434
Docket Number ~~MW~~-26322

Elliott H. **Goldstein**, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(~~Southern~~ Pacific Transportation Company
(~~Eastern~~ Lines)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned outside forces to unload **and** load track material on the Kerrville Branch between San **Antonio** and Beckman, Texas beginning January 3, 1984 (System File MW-84-35/411-58-A).

(2) Machine Operators S. R. Sampayo and J. G. **Terrazas** shall each be allowed seven hundred fifty-two (**752**) hours of pay at their respective straight time rates **and** three hundred sixty-eight (368) hours of pay at their respective overtime rates because of the violation referred to in Pact (1) hereof."

OPINION OF BOARD: Claimants hold seniority as **Machine** Operators on the San Antonio Division of the Maintenance of **Way** and Structures Department.

On December 6, 1983, Carrier notified the General Chairman of its intent to contract with an outside firm to unload and load track material on the Kerrville Branch between San Antonio and Beckman, Texas. The firm, equipped with two backhoe tractors mounted on gondola cars, performed the work of loading and unloading track material such as bags of **rail** anchors, kegs of spikes, tie plates and joint bars. Beginning on January 3, 1984, two employees of the outside firm worked a total of 752 straight time hours and 368 overtime hours on this project.

The Organization contends that the work contracted out is work exclusively reserved to members of the Organization pursuant to Articles 1, 2, 17, and 21 of the controlling Agreement. It maintains that loading and unloading track material has always been performed manually by track laborers **or** by machine operators using Burro Cranes and that the Carrier's assignment of such work to outside forces deprived the Claimants of work to which they were contractually entitled.

Carrier points out that the burden of proof is upon the Organization to show that the work in dispute is covered by a specific Scope Rule provision or exclusive systemwide practice. In the instant case, the Organization failed to prove either element, Carrier asserts, since the loading and unloading work required specialized equipment that could not be leased without using the lessor's employees, and furthermore, since the lessor in this case had provided such services for the past four **or** five years.

Carrier also argues that even if a violation is found, the Claim for **compensation** must be denied because it is undisputed that Claimants were fully employed at all relevant times, thereby precluding a compensatory award.

After a careful review of the record evidence, we are convinced that the Organization's Claim must be rejected. That the work in question was in **fact** contracted out **is** not at issue, nor is there any dispute that Carrier gave proper notice. Furthermore, there is no disagreement here as to the seniority rights of Claimants under the Agreement. Such rights, however, are not relevant to this dispute unless it can first be established that the work at issue was Claimants' to perform either under the express coverage of the Scope Rule **or** under an exclusive Reservation of Work Rule. (See Third Division Awards 15943, 17943, 18243, 19032, and 20841.) Give" the absence of any probative evidence by the Organization on either of these essential points we have no alternative but to conclude that the record does not support the Organization's Claim. Carrier raised several issues regarding the measure of damages but we do not reach these points herein because we must deny the Claim for failure of proof.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction **over** the dispute involved herein; and


That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third **Division**

Attest:



Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of August 1987.