

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(St. Louis Southwestern Railway Company

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

(1) The Carrier violated the Agreement when it assigned outside forces to weld, strip, grind, crop and load ribbon rail at **Illmo**, Missouri beginning August 6, 1984 (System File MW-84-46-CB).

(2) The Carrier also violated Article 33 of the Agreement when it did not give the General Chairman advance notice of its intention to contract said work.

(3) As a consequence of the aforesaid violations, Welders **D. G. Hiatt** and **J. F. Rochner** and Welder Helpers **G. A. Vance** and **B. D. Doherty** shall each be allowed a" equal proportionate share of the man-hours expended by outside forces in performing the work referred to in Part (1) hereof."

FINDINGS :

The Third 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 employees 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.

On September 21, 1984, the Organization filed a claim protesting the fact that beginning August 6, 1984, four employees of the Holland Welding Company performed the work of welding, stripping, finish grinding, cropping and loading of ribbon rails for use on the Pine Bluff Division. The claim sought a" equal proportionate share for the total number of hours expended by the contractor beginning "August 6. 1984 and on a continuous basis." The claim was denied and appealed.

In its January 25, 1985, declination the Carrier acknowledged that the Holland Welding Company had worked on the Pine Bluff Division from August 6, through September 27, 1984. However, it maintained that the lack of notice was an oversight and that the Claimants were all fully employed during the relevant period of time.

On May 14, 1985, the General Chairman confirmed the conferencing of the claim as follows:

"This has reference to claim MW-84-46-CB, your letter of January 25, 1985, and the conference held concerning this claim May 2, 1985.

During the conference you were advised that it was our position that there was not an emergency at the time the work was performed, the Carrier clearly violated Article 33, the contractor worked from August 6, 1984 through September 27, 1984 or a total of 1248 man hours.

You were advised that since this is a continuing claim it is now for a total of 1248 hours.

You were also advised that the Carrier owned Holland Welder has completed working on the North end seniority district and there will be a force reduction in the Welding Department, therefore these employees will be adversely affected and have a loss of earnings account of this contractor performing their work.

We cannot accept your decision and the claim will be sent to the Third Division of the National Railroad Adjustment Board."


From this we are unable to tell if the work of the contractor was limited to the period of August 6 to September 27, 1984, as the Carrier stated, or if the Organization is contending the contractor's activities continued past September 27, 1984, into 1985. This is a critical determination since without it we cannot determine if there was a true loss of work opportunities for the Claimants.

Since we cannot conclude, based on this record that the contracting took place after September 27, 1984, and since the Claimants were fully employed at least up to that date, no relevant loss of work or work opportunities has been proven. Accordingly, while the Carrier admittedly violated the advance notice provision of Article 33, albeit through an oversight, the monetary claim is denied.

A W A R D

Claim sustained in accordance with the **Findings.**

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1988.