

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe 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 construct fence at Belen, New Mexico October 5 through October 31, 1984 (System File 160-A8-8431/11-1940-20-219).

(2) As a consequence of the aforesaid violation, furloughed B&B Mechanics L. P. Grant, C. T. Gonzales, W. D. Kennedy, J. E. Frerichs, J. L. McKinney and B&B Helpers T. J. Miner, D. J. Shetter, F. S. Apodaca, S. V. Salazar and R. L. Bejar shall each be allowed pay at their respective rates for an equal proportionate share of the three hundred (300) 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 employe 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.

From October 5, 1984, to October 31, 1984, three employees of Valley Fence Company constructed 1,350 feet of chain link fence on Carrier property at Belen, New Mexico. The Organization claimed that the work in question was work customarily and traditionally performed by Carrier maintenance of way forces.

Carrier, on the other, has asserted that many fencing jobs on Carrier's property have been performed by outside contractors and that fencing work is not work reserved exclusively to Carrier maintenance of way forces.

This Board is again confronted with a case involving subcontracting of work that Carrier's maintenance of way forces could most likely perform and have performed many times. In spite of this fact, however, Carrier is not barred from subcontracting the fencing work in question. While maintenance of way forces have certainly built many fences on Carrier property, the general Scope Rule contained in the agreement does not specifically name fence building as work reserved to such forces. In fact, Carrier presented a long list of projects where fences were built by outside contractors.

The Board takes note that Carrier did properly inform the General Chairman of the intent to contract out the fence work.

While this Board has been supportive of the notion that Carrier should attempt to use its own forces rather than contract out work, it cannot find a basis in the instant claim for a sustaining award.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of March 1989.