

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28488
Docket No. MW-27528
90-3-86-3-786

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

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

PARTIES TO DISPUTE: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned and/or permitted outside forces to load rail and other track material between Mile Post 44.8 and Mile Post 6.2 on the Bellaire Line from November 20, 1985 to March 7, 1986 (System File MW-86-20/445-64-A).

(2) The Carrier also violated Article 36 when it did not give the General Chairman advance written notice of its intention to contract said work.

(3) Apprentice Foremen J. B. Reagan and J. H. Hudson, Machine Operators D. V. Keeling and C. E. Nash and Laborers J. A. Mosby, R. L. Thomas, A. Reyes and N. J. Falls shall each be allowed six hundred twenty-four (624) hours of pay at their respect straight time rates and two hundred sixty (260) hours of pay at their respective time and one-half rates because of the aforesaid violations."

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 employes involved in this dispute are respectively carrier and employes 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.

The Carrier sold approximately 5800 net tons of scrap 90# rail and approximately 1250 net tons of other track material to the Benson-Quinn Company on an "as is where is" basis, whereby the purchaser was required to arrange for pick up and removal of the materials. The rail and other material had already been removed from the track structure by covered employees of the Carrier and was left along the right-of-way. Benson-Quinn contracted with Herzog Corporation to have the materials loaded into gondola cars. Herzog provided its own equipment and employees for this work. The Organization contends the Carrier violated the Agreement by improperly subcontracting out work belonging within its scope.

The basic issue in this case is whether or not the picking up and removing of scrap rail and other track material which had been sold "as is and where is" is within the Scope of the Agreement and subject to the Rules regarding subcontracting. Article 1 of the Agreement, which is the Scope Rule, merely lists the titles of positions covered by the Agreement. There are no specific descriptions of the duties of the crafts or positions listed. From the titles of these positions, however, we can conclude the duties performed would generally fall within the Scope of the Agreement. In this case, though, the work was done for the benefit of Benson-Quinn and involved the removal of material which belonged to them. The rail and other material were no longer the property of the Carrier.

In a similar case, this Board held in Third Division Award 24280 that such a sale and removal by the outside purchaser was not improper and required no notice under Article IV, Contracting Out, of the May 17, 1968 National Agreement. The Organization's citation of Third Division Award 26547 in rebuttal is inappropriate in that the Board found that the Carrier had denied the Claim in that case solely on the basis that the Claimants were not furloughed at the time. There is no reference in that Award to the defense offered by the Carrier in this case. Accordingly, we hold here, as we did in Award 24280, that the work was not contracted out, and the Agreement was not violated.

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 7th day of August 1990.