

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)

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

(1) The Carrier violated the Agreement when it assigned or otherwise permitted outside forces to perform the work of welding rail for use on the Carrier's right-of-way beginning December, 1987 and thereafter on a continuing basis (System File MW-88-31/468-55-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) As a consequence of the violations referred to in Parts (1) and/or (2) above, the Claimants listed below shall each be allowed pay for an equal proportionate share of the total number of man-hours expended by outside forces in performing the work referred to in Part (1) above beginning December, 1987 and continuing until the violation is corrected.

T. J. Cox, Foreman	R. A. Wingate, Foreman
A. J. Kortz, Lead Welder	J. O. Wooley, Welder
D. F. Colley, Welder	H. Owdley, Grinder
A. E. Rodriguez, Grinder	F. H. Clark, Grinder
L. D. Anderson, Grinder Helper	C. L. Schumacher, Grinder Helper
R. K. Lankford, Foreman	J. H. Richards, Machine Operator
L. H. Lipp, Machine Operator Helper	C. Meier, Machine Operator"
R. Casanova, Machine Operator Helper	

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 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.

In December 1987, the Carrier closed its rail welding plant in Houston, Texas, abolishing Claimants' jobs as a result. For over twenty years, the Carrier had used this plant for the welding of rail in lengths from 78 feet to one-quarter mile. With the closure of the plant, the Carrier began to purchase welded rail from C.F.I. Corporation, a rail manufacturer. The actual welding of the rail was performed by Holland Welding Company at a plant in Tucson, Arizona. The Organization contends the welding work performed by Holland Welding constitutes contracting out by the Carrier in violation of the Agreement.

In prior Awards, this Board has drawn a distinction between the purchase of material finished to specifications and the purchase of unfinished goods or component parts which require additional work by covered employees. See Third Division Award 27184 concerning preassembled track panels, Third Division Award 19645 concerning a prewired CTC bungalow, Third Division Award 23020 involving preassembled car retarders and Third Division Award 28195 involving creosote treated lumber. In each case, the Board held the purchase of finished goods did not constitute subcontracting.


In this case, the Carrier avers its contract was with C.F.I. for the purchase of welded rail. C.F.I., in turn, contracted with Holland to perform the welding. The Carrier did not take delivery of the rail until it had been welded. There is no evidence in the record to suggest there was any privity of contract between Holland and the Carrier. We must conclude, therefore, that the Carrier purchased finished products and did not engage in contracting out. The Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1990.