

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad Company)

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

(1) The Carrier violated the Agreement when it assigned outside forces (Auto Truck) to install hy-rail attachments in Truck Units 63579 and 63749 which were delivered to the Carrier on April 7, 1988 and April 14, 1988, respectively (Carrier's File 880311 MPR).

(2) The Carrier also violated Article IV of the May 17, 1968 National Agreement 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 Eastern District Work Equipment Mechanics listed below* shall each be allowed pay at their respective straight time rates for an equal proportionate share of the one hundred forty-eight (148) man-hours expended by outside forces performing the work listed in Part (1) above.

D. L. Wharton
D. E. Price
R. L. Smith
R. M. Ussery
R. L. Goodin

H. S. Wells
R. A. Grooms
J. P. Koenigsfeld
R. G. Holman"

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.

In April 1988, two trucks were delivered to Carrier work gangs. The trucks were delivered with the Hy-rail attachments installed by an outside firm.

There is no dispute that, on occasion, such units are delivered without the Hy-rail attachments, and such are installed by Carrier forces.

As the Board views it, this is an instance in which the Carrier has determined to purchase equipment rather than perform installation work on the property. The applicable Scope Rule is clearly general in nature, so any question of reservation of the particular work is not at issue.

Because of the Carrier's decision to purchase the completed product, the question of applicability of Article IV, Contracting Out, also does not arise. Of relevance here is Third Division Award 28561, which states as follows:

"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. . . . In [prior cases] 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 purchase 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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of January 1992.