

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29566
Docket No. MW-29241
93-3-90-3-117

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned outside forces (LORAM Rail Grinding Services) to perform switch grinding work between Gibbon, Nebraska and Cheyenne, Wyoming beginning October 6, 1988 and continuing (System File S-112/890082).

(2) As a consequence of the aforesaid violation, furloughed Nebraska Division Roadway Power Tool Machine Operators L. H. Hans and J. D. Christiansen shall each be allowed pay at the Group 12 Machine Operators rate for an equal proportionate share of the total number of man-hours expended by the outside contractors performing the work identified in Part (1) above."

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 employe 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.

Summarizing its Claim, the Organization states that:

"Beginning on October 6, 1988, the Carrier assigned outside forces (LORAM Rail Grinding Services) to perform work grinding switch points, stock rails, connecting rails and switch frogs between Gibbon, Nebraska and Cheyenne, Wyoming."

On the property the Carrier stated that: "Loram did not do any switch grinding in the territory in question during the time period identified in the grievance." The Carrier concedes, however, that the contractor had been performing such work at other locations and that previous notice to the Organization had been given. Such notice led to an extensive interchange of correspondence.

The Carrier in its argument to this Board, adds:

"In the event the Board is satisfied that the Organization has proved that there is basis for a claim, the Company is willing to pay the claim off provided that the payment does not interpret either the Scope or Contracting Rules or any of the other rules cited by the Organization."

With such contrasting statements of alleged facts, the Board has no basis on which to resolve the dispute in final fashion. Given the Carrier's offer, the Board directs the parties to review the facts in this situation with a view to determining whether the alleged work was performed at the time and place stated by the Organization. If agreement can be reached that such work was performed, the Claim is sustained to the limited extent indicated above by the Carrier. If such agreement is not forthcoming, the Claim is dismissed.

A W A R D

Claim disposed of in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.