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NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29721
Docket No. MW-29238
93-3-90-3-113

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
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(Duluth, Missabe and Iron Range Railway
(Company

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

- (1) The Agreement was violated when the Carrier assigned outside forces (Waldholm Excavating INC.) to perform the work of hauling and spreading fines at the Lakehead Storage Facility beginning October 11, 1988 (Claim No. 31-88).
- (2) The Agreement was further violated when the Carrier failed to timely and properly notify and confer with the General Chairman concerning said contracting as required by Supplement No. 3.
- (3) The Agreement was further violated when the Carrier assigned Track Department employees instead of B&B Department employees to grade and compact fines to repair the base at the Lakehead Storage Facility beginning October 11 and continuing through October 26, 1988.
- (4) As a consequence of the violations referred to in Parts (1) and/or (2) above, furloughed B&B Truck Driver J. R. McDonnell shall be allowed forty (40) hours of pay at the B&B truck driver's straight time rate and receive appropriate credits for vacation and all other benefit loss suffered.
- (5) As a consequence of the violation referred to in Part (3) above, furloughed B&B Mechanics J. C. Lee, R. D. Haedrich and R. A. Struck shall each be allowed ninety-six (96) hours of pay at the B&B mechanic's straight time rate and receive appropriate credits for vacation and all other benefit loss suffered."

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 employee 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.

Commencing October 11, 1988, the Carrier contracted with outside forces to haul and spread "fines" (stones) at the Lakeland Storage Facility. The Carrier also assigned Track Subdepartment employees to grade and compact this material as part of a project to recondition the facility. The Claimants herein are furloughed Bridge and Building Subdepartment employees, and it is the Organization's contention that the work should have been assigned to them.

At issue here is Supplement No. 3, Contracting of Work, which reads in pertinent part as follows:

- "(a) The Railway Company will make every reasonable effort to perform all maintenance work in the Maintenance of Way and Structures Department with its own forces.
- (b) Consistent with the skills available in the Bridge and Building Department and the equipment owned by the Company, the Railway Company will make every reasonable effort to hold to a minimum the amount of new construction work contracted.
- (c) Except in emergency cases where the need for prompt action precludes following such procedure, whenever work is to be contracted, the Carrier shall so notify the General Chairman in writing, describe the work to be contracted, state the reason or reasons therefor, and

afford the General Chairman the opportunity of discussing the matter in conference with Carrier representatives...."

Numerous Awards involving these parties have reviewed Supplement No. 3. These Awards concern the application of Supplement No. 3. In this instance, the Board finds the Organization's contention without convincing merit as to the particular work involved. The work involved transporting large quantities of material to the work site. Third Division Award 28883 commented as follows:

"In considering this case, there are several factors that must first be addressed. Firstly, there is no dispute that B&B subdepartment forces (truck drivers) have hauled gravel on the property in Carrier owned dump trucks. There is no showing that said forces have transported or hauled gravel from outside locations to points on the property or from the property to outside locations. There has been no showing that B&B forces have utilized rental equipment to haul large amounts of gravel on the property on the property or that large or equivalent amounts as herein were hauled on the property by B&B forces in smaller amounts over a purposely extended period of time." (Emphasis added)

This finding is relevant here in that the Carrier required large amounts of material to be brought to the site. It follows that the Organization has not demonstrated that the work is normally or customarily performed by B&B forces.

As to the assignment of Track Subdepartment employees to the work, the Organization has failed to demonstrate that such work is customarily assigned to B&B forces to the exclusion of Track Subdepartment forces. The Organization refers to Supplement No. 9, Jurisdiction of Work - Maintenance of Way - Ore Dock Employees, but the Board finds no support therein as to the particular work here involved.

In sum, Supplement No. 3 refers to the Carrier's need for a "reasonable effort" and the use of "equipment owned by the Company"; it is not an all-encompassing prohibition of contracting. In the circumstances here under review, the Board finds the Carrier acted within its retained rights and in accordance with past practice.

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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever
Nancy J. Dever - Secretary to the Board

Dated at Chicago, Illinois, this 12th day of August 1993.