

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29873
Docket No. MW-29848
93-3-91-3-219

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(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 an outside concern to perform track dismantling work in 'B' Yard within Proctor Yard at Proctor, Minnesota beginning on October 9, 1989 and continuing (Claim No. 35-89).
- (2) As a consequence of the aforesaid violation, B&B Truck Driver J. Lee and the senior furloughed or available four (4) trackmen, one (1) laborer, one (1) B machine operator, one (1) crane operator and one (1) foreman shall each be allowed pay at the appropriate rates in the amount of the total man-hours expended by the corresponding employe of the outside concern performing the above-described track dismantling work."

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.

This claim was filed on November 24, 1989, alleging that Carrier violated Supplement No. 3 and Rule 26 of the parties'

Agreement when it contracted out the dismantling of track in the "B" Yard at Proctor, Minnesota, to the Continental Rail Company. The bulk of the track materials removed were retained by the outside Contractor for resale; a smaller portion was retained by Carrier. It is undisputed that Carrier assigned its Track Sub-department forces to remove the materials that it kept.

The Organization points out that Carrier failed to give the General Chairman advance written notice of its intent to contract out the work and maintains that Claimants were fully qualified, available, and willing to do the job. It contends that the work of the character involved is encompassed within the scope of the Agreement and it has been assigned to Carrier forces customarily and historically. The December 11, 1981, Letter of Agreement signed by O.M. Berge and Charles I. Hopkins representing the Organization and the railroads respectively placed a special burden on Carrier to increase the use of maintenance of way forces.

The Organization does not believe that Carrier sold the scrap cross ties and track material to the Contractor. Rather, it "deep discounted" the material in return for the removal work. The Organization notes that Carrier failed to furnish its fully executed contracts with the Contractor. It provided only its purchase authority documents. Carrier failed to meet its burden of making the purchase documents a part of the record.

This Board has reviewed the entire record of this case and concludes that the facts are similar in certain important respects to those in Third Division Award 29394, governing the same parties, which was rendered on September 17, 1992. In the instant dispute, the yard in question had been eliminated and the track was sold because it was no longer needed for railroad operations. In Award No. 29394, the trackage in question was no longer needed because the property was sold.

Relying on prior Third Division Award 12918, the Board, in Award 29394, determined that "for the most part, we find no violation by the Carrier here." In Award 12918, it had been concluded that:

"...the work of dismantling and removing completely the abandoned property does not fall within the contemplation of the parties. The work cannot be considered maintenance, repair or construction."

This reasoning applies here as well.

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In Award 29394, the Carrier Members of the Board concurred with the basic decision, but dissented to that portion that concluded that Carrier erred in using the Contractor's forces to dismantle and transport Carrier property back to Carrier. In the present case, maintenance of way forces were used for this work and thus this issue does not arise.

Finally, while noting the Organization's argument concerning Carrier's failure to furnish its fully executed contracts with the Contractor to the Organization, we can find no indication that the Organization disputed the material that it did receive on the property. Thus, this matter is not properly before us.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 26th day of October 1993.