

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30180  
Docket No. MW-29523  
94-3-90-3-469

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  
(  
(Southern Pacific Transportation Company  
(Eastern Lines)

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

1. The Agreement was violated when the Carrier assigned outside forces to perform rail grinding work between Mile Post 815.2 at Belen, Texas and Mile Post 736.9 at Sierra Blanca from July 31 through August 5, 1989 (System File MW-89-97/485-52-A SPE).
2. The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intention to contract out said work as required by Article 36.
3. As a consequence of the violations in Parts (1) and/or (2) above, Welding Foreman R.K. Lankford, Machine Operators H. R. Cordero, F. Fuentes and Machine Operator Helper E. Rodriguez shall each be allowed forty (40) hours of pay at their respective straight time rates and forty-one and one-half (41.5) hours of pay at their respective time and one-half rates."

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.

At issue here is the Carrier's use of an outside contractor (Loram) to perform rail grinding work. There is no dispute that rail grinding work is performed by Maintenance of Way forces. The record is equally clear, however, that outside forces have been employed for rail grinding both prior to and concurrent with such work being undertaken by Carrier forces.

In response to a Claim concerning the contracting of such work, the Carrier stated in its April 6, 1990 letter to the Organization as follows:

"The Southern Pacific Transportation Company purchased two 40-stone rail grinders from Fairmont Railway Motors in the early 1980s to be used primarily to grind curves. [These are grinders operated by Carrier Maintenance of Way employees.] Prior to obtaining these grinders, all rail grinding was performed by outside forces. These two machines are presently combined to get better productivity and are working on the Western Lines. When the work there is completed, the combined machines will be moved to Del Rio, Texas, to grind the curves in West Texas.

Recent tests have shown that the life of tangent rail can be prolonged with a consistent maintenance-based program of rail grinding. In order for this Carrier to implement such a program, it was necessary to obtain additional grinding capacity. Starting in 1989, we began using Loram Maintenance of Way, Inc. to perform additional rail grinding on both the Western and Eastern Lines. The grinding stones on the Loram equipment are hydraulically adjusted and computer controlled. This type of equipment is not owned by any railroad in the United States. The rail grinding being performed by Loram could not be done by Carrier forces using our Fairmont equipment, as the magnitude of the program far exceeds the capacity of our equipment".

The Organization contends that, after the parties established rail grinding agreements, the Carrier "abolished the positions on its rail grinding train and ceased operation in 1989." This is at variance with the Carrier's contention of continued rail grinding operation by its forces. Whatever the facts may be, the question before the Board is whether the Carrier violated the notice provision of Article 36 and other Rules in its contracting specific rail grinding work to Loram as indicated in the Statement of Claim.

The Board concurs with the Organization that it need not meet an "exclusivity" test to advance its Claim to rail grinding work.

However, the Carrier has established that outside forces have performed rail grinding work over many years and have done so on repeated occasions during the period that the Carrier's own rail grinders were in operation. Further, the Carrier makes a credible case that the Loram equipment here under review provides service not obtainable from the Carrier's own equipment. On either of these bases, the Board determines that the currently cited instance of use of Loram equipment is not "within the scope of the applicable schedule agreement" and thus not covered by Article 36.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Linda Woods  
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 26th day of April 1994.