

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30216  
Docket No. MW-29517  
94-3-90-3-454

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  
(  
(St. Louis Southwestern 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 the work of clearing crossties from the right of way between Corsicana and Tyler, Texas, beginning on April 10, 1989. (System File MW-89-27-CB/481-38-A)
- (2) The Agreement was further violated when the Carrier entered into a contracting transaction without giving the General Chairman at least fifteen (15) days advance written notice of its plan to do so.
- (3) As a consequence of the violations referred to in either Part (1) and/or Part (2) above, the Carrier shall pay furloughed employees W. D. Brooks and L. R. Pannnell three hundred forty-four (344) hours each at their respective straight time rates of pay and eighty-six (86) hours each at their respective time and one-half overtime rates of pay and continuing so long as the contractor performed the above described track 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 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.

This is a Claim on behalf of two furloughed employees in connection with the removal by contractor's employees of scrap crossties and other tie gang debris from the right-of-way between Corsicana and Tyler, Texas, following work by a system tie gang on such trackage.

The record convincingly demonstrates that the Carrier sold the scrap crossties to the outside firm in an "as is, where is" condition. This sale does not represent "contracting out" in any sense contemplated by Article 33. Virtually identical findings were reached in denial Third Division Award 28489 on the same property. Third Division Award 29016, also under similar circumstances on the property, was a sustaining Award solely on the basis that, unlike here, the Carrier failed to present evidence that a sale to the contractor had occurred.

As one of its arguments, the Organization suggests that the sale was in fact a "sort of barter agreement" in that the ties were sold at a price alleged to be below their actual value. This, however, does not disturb the fact that the Carrier ceded ownership of the material and was no longer in a position to contract the work in its own interest.

With this conclusion, arguments raised by both parties as to other aspects (lack of notice, Scope Rule, etc.) need not be addressed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:



Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.