

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30220
Docket No. MW-29624
94-3-90-3-609

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 Employes
(
(Elgin, Joliet and Eastern Railway Company

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

- (1) The Carrier violated the Agreement when it assigned outside forces to pick up scrap ties behind the extra gang performing tie renewal work beginning on April 10, 1989 and continuing (System File TH-11-89/UM-28-89).
- (2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it did not give the General Chairman advance written notice of its intention to contract said work.
- (3) As a consequence of the aforesaid violations, Foreman S. Robles and Roadway Machine Operator G. Garcia shall each receive pay at their respective time and one-half rates of pay for 25% of the total hours the outside contractor's forces performed the work described in Part (1) hereof."

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.

As part of its "super tie" program in 1989, the Carrier replaced approximately 75,000 ties over its entire system. Prior to the initiation of this program, the Carrier had entered an "Agreement of Sale" with an outside contractor to purchase, pick up, and dispose of all discarded ties, both along tracks and at collection points.

The Organization's claim concerns the work of picking up ties alongside tracks, contending that this is work normally performed by Carrier forces and that the procedures required for such contracting had not been followed.

The record demonstrates clearly that the arrangement with the outside firm provides for the sale of the ties in an "as is, where is" manner. To this, the Organization offers the theory that the sale price for ties was so low that what was actually represented was a "barter" of the contractor's labor to remove the ties in exchange for the ties themselves. Thus, according to the Organization, work normally performed by Carrier forces was, in fact, given to outside forces.

The Board finds this an interesting theory, but the fact remains that there was an actual sale of the ties; the Carrier passed possession of the ties to the buyer; and the buyer removed the ties from Carrier property. The determinative factor is that ownership of the ties passed to the buyer.

In previous Awards, the Board has issued denial Awards in reference to similar sale and disposition of ties on an "as is, where is" basis. See in particular Third Division Awards 28615 and 28489. As in these instances, the Board finds no Rule violation in the sale and, in consequence, no requirement to give notification to the General Chairman because no contracting of work was involved.

AWARD

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.