

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30682
Docket No. MW-30086
95-3-91-3-503

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
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(The Atchison, Topeka and Santa Fe
(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 rail welding work at Amarillo, Texas beginning on January 9, 1989 (System File 130-A8-8912/11-1940-20-408).
- (2) The Agreement was further violated when the Carrier contracted out the above-mentioned work without giving the General Chairman advance written notification as required by Appendix No. 8 (Article IV of the May 17, 1968 National Agreement).
- (3) As a consequence of either Part (1) and/or Part (2) above, the Claimants listed below* shall each be allowed an equal proportionate share of the total number of man-hours expended by the contractor's employees performing the above-described work from January 9, 1989 and continuing."

*Names of 51 Claimants are included in the claim.

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 claim alleges the improper contracting of welding work and failure to notify the Organization thereof in advance. This dispute, however, is substantially different from the usual type of challenge to the Carrier involving the contracting of work claimed by the Organization.

At issue here are the results of the Carrier's determination to go out of the business of welding rail through the closing of its Centralized Rail Welding Plant ("CRWP") at Amarillo, Texas. The Organization was aware of this intention on April 11, 1988, when it served a Section 6 Notice on the Carrier concerning the matter. A conference involving Carrier and Organization representatives occurred on July 13-14, 1988. As a result of this conference, the Organization was advised of the "planned closure of the Centralized Rail Welding Plant" on or about October 3, 1988. The parties agreed to seniority arrangements for employees whose assignments would end upon the discontinuance of the CRWP by the Carrier.

The closing occurred on September 30, 1988. At this time, arrangements had been completed by which the Carrier would transfer to CF&I Steel Corporation "possession of and title to certain property presently being used by [the Carrier] at its Amarillo rail welding facilities for relocation to and use at CF&I's plant in Pueblo, Colorado, as well as the terms by which CF&I will perform rail welding and other services for [the Carrier]."

The Organization did not initiate a claim immediately upon the CRWP closing on September 30, 1988. Rather, the claim was filed as to the Carrier's receipt on January 9, 1989, of a shipment of nine "strings" of welded rail from CF&I's Pueblo location. The claim contended that the Carrier had failed to give the General Chairman advance notice as required by Article IV of the May 17, 1968 Agreement.

The Board finds that the Organization was clearly on notice as to the transaction involving the CRWP, as detailed above. As the Carrier argues, it would be futile to give advance notice as to each receipt of welded rail. There was no remaining Carrier facility under which Carrier forces could perform this work.

The claim here is of the usual form, charging the Carrier with noncompliance with required contracting procedures. The Carrier effectively argues that it no longer has the equipment to perform rail welding, at least in the manner previously undertaken at the CRWP. Thus, the Claim must be found without merit.

Note is taken of the Carrier's contention that its CRWP facility was equipped to handle rail no longer than 40 feet, while the standard in the railroad industry was 80 feet. To convert the CRWP would cost about \$3,000,000, based on a 1979 study. In this regard, the Organization points out that economy of operation is not a valid criterion to avoid limitations on contracting, as provided in the Agreement. This point is mentioned, however, to indicate that the Carrier was not arbitrary or capricious in its decision to eliminate its own rail welding facility.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of January 1995.