

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30689
Docket No. MW-30104
95-3-91-3-535

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
(
(Union Pacific Railroad 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 (Aaragon Brothers and Bob Blake Contracting) to perform the work of building of concrete forms, cement finishing and associated site preparation for the construction of concrete pads at the Welding/Panel Plant at Laramie, Wyoming beginning on February 1, 1990 (System File S-277/900359).
- (2) The Agreement was further violated when the Carrier did not give the General Chairman advance written notice of its intention to contract out the work involved here in accordance with Rule 52.
- (3) As a consequence of the violations referred to in either Part (1) and/or Part (2) hereof, First Class Carpenters J. W. Lamons, P. J. Kern, G. B. Roper and R. L. Longmire shall each be allowed an equal proportionate share of the total number of man-hours expended by the above outside concern's forces beginning on February 1, 1990 and continuing."

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 dispute concerns construction work at the welding plant of the Carrier's Laramie, Wyoming facility. The Organization contends that the Carrier "assigned outside forces . . . to perform typical B&B concrete work, i.e., removing old concrete and steel rollers, building of concrete forms, cement finishing and associated site preparation for the construction and installation of new concrete pads and steel rollers."

The Carrier responds that it did not contract such work. Rather, according to the Carrier, the work was contracted by the Lewis Rail Service Company, an independent company not under the Carrier's control. In support of this, the Carrier provided on the property what it stated to be a "lease" of the welding plant to Lewis. As noted by the Organization, the document is not a lease but a "Rail Welding Contract." Under its terms, Lewis is to construct "at its expense . . . a building including its foundation on Railroad Company property to house the welding line."

Also as noted by the Organization the copy of the "Agreement" furnished during the claim handling procedure was not signed by either party, leaving open the question as to whether it was actually placed in effect.

On the other hand, the Organization presents no evidence in support of its contention that the Carrier was a party to the contracting of the concrete work.

In the face of these conflicting positions, each without clear and convincing proof, the Board has no basis to resolve the question of whether or not the work was under the Carrier's control. Without resolution of this central point, other aspects of the dispute are moot.

AWARD

Claim dismissed.

Form 1
Page 3

Award No. 30689
Docket No. MW-30104
95-3-91-3-535

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.