

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31160
Docket No. MW-30648
95-3-92-3-420

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Kansas City Southern Railway Company

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

- (1) The Agreement was violated when the Carrier assigned outside forces (Lewis Rail) to assemble switch and rail panels at Mile Post T-41.9, Baldwin, Texas on August 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, and 31, 1990 [Carrier's File 013.31-320(424)].
- (2) The Agreement was violated when the Carrier assigned outside forces (Lewis Rail) to assemble switch and rail panels at Mile Post T-41.9, Baldwin, Texas on September 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27 and 28, 1990 [Carrier's File 013.31-320(430)].
- (3) The Agreement was violated when the Carrier assigned outside forces (Lewis Rail) to assemble switch and rail panels at Mile Post T-41.9, Baldwin, Texas on October 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30 and 31, 1990 [Carrier's File 013.31-320(439)].
- (4) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it failed to furnish the General Chairman with advance written notice of its intention to contract out said work.
- (5) As a consequence of the violations referred to in Parts (1) and/or (4) above, Section Foremen R. A. Norwood and R. K. Oney and Laborers M. Bradshaw, C. W. Archfield and E. L. Black shall each be allowed pay at their respective rates

of pay for an equal proportionate share of the eight hundred eighty (880) man-hours expended by the outside forces.

- (6) As a consequence of the violations referred to in Parts (2) and/or (4) above, Section Foreman R. A. Norwood and Laborers C. W. Archfield and E. L. Black shall each be allowed pay at their respective rates of pay for an equal proportionate share of the one thousand five hundred twenty (1520) man-hours expended by the outside forces.
- (7) As a consequence of the violations referred to in Parts (3) and/or (4) above, Section Foremen R. Oney and R. A. Norwood and Laborers A. J. Ray, M. Bradshaw, E. L. Black and C. W. Archfield and Welder Helper D. A. Daily shall each be allowed pay at their respective rates of pay for an equal proportionate share of the one thousand two hundred eighty-eight (1288) man-hours expended by the outside forces."

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.

According to the Organization, in August, September, and October of 1990, the Carrier hired an outside contractor, Lewis Rail, to assemble switch and track panels adjacent to Carrier's property at Mile Post T-41.9 at Baldwin, Texas. The Organization took exception to the Carrier's decision and filed the instant claims. The Organization contends that "routine track and switch construction work, whether it is in-track or out of track panel construction work, is customarily and traditionally performed by the Carrier's Maintenance of Way forces". In addition, the

Organization contends that the Carrier never notified the General Chairman of its intention to use an outside contractor as is required by Article IV of the National Agreement and the December 11, 1981 Letter of Agreement.

The Carrier denied the claim contending that it purchased said prefab track and switch panels from an outside vendor (Lewis Rail) and that such prefab track panels were not built on Carrier's property. The Carrier contends that the Claimants were fully employed during the claim dates and that none of the Claimants suffered any loss of work or pay. Furthermore, the Carrier contends that the Organization's claim is without foundation or merit.

This Board has reviewed the very extensive record in this case, and we must find that the Organization has failed to meet its burden of proof that the Carrier violated the agreement by assigning outside forces to assemble switch and rail panels. A thorough review of the file indicates that there was no contracting out of work that was normally performed by bargaining unit employees. This Board agrees that building track panels is scope-covered work which has historically been performed by maintenance of way employees. However, this case involved the purchase of finished product from a vendor, Lewis Rail, and that Lewis Rail was not on Carrier property, but was located adjacent thereto.

This Board has reviewed the Organization's evidence with respect to whether or not the Carrier supplied its own materials to the contractor for use in the performing of the work, and we are not convinced that the Carrier supplied materials for the work performed by Lewis Rail. Some of the materials may have been carried by Carrier rail cars and other vehicles, but it is not clear from the record that those materials were Carrier materials.

Since this Board has determined that this case does not involve subcontracting, the Organization's arguments with respect to notice of subcontracting really do not apply.

Since the Organization has not sustained its burden of proof, this Board must deny the claim.

AWARD

Claim denied.

Form 1
Page 4

Award No. 31160
Docket No. MW-30648
95-3-92-3-420

ORDER

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 26th day of September 1995.