

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31162
Docket No. MS-30659
95-3-92-3-563

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

PARTIES TO DISPUTE: (William Shane Woodard and Wayne Stanley Reid
(Norfolk Southern Railway Company)

STATEMENT OF CLAIM:

"Claim on behalf of W. S. Woodard and Wayne Stanley Reid involving the questions:

- 1) the misuse of subcontracting
- 2) violations of rules 1, 5, 56, 59 of the current agreement
- 3) negating the good-faith relationship that was to be resolved in the Berge/Hopkins 1981 Letter of Agreement

[Carrier file MW-GNVL-91-9-LM-139]"

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.

Claimants Woodard and Reid were employed as track repairman and track repairman helper assigned to the Charlotte District Track Repair Gang TR-77. Gang TR-77 was a trailer gang which could be moved to the best suited location to efficiently perform the required work. Members on the trailer gang were paid travel expenses under the provisions of Rule 34. Since the gang had not

been moved from the Charlotte District area in several years, the Carrier determined that it would be more cost efficient if this gang were changed to a headquartered gang.

The Carrier issued a Bulletin in March of 1991 readvertising Gang TR-77 as a headquartered gang. The Claimants were successful applicants and, therefore, were assigned to the headquartered gang.

On April 25, 1991, the Organization filed a claim on behalf of the Claimants alleging that the Carrier violated Rules 1, 56, and 59 "when the Carrier used Contractors to perform track repair work, and cut off Track Repairman Woodard and Helper Reid". The claim was denied. The Claimants have appealed this claim to this Board. The Claimants allege that because their gang was converted to a headquarters gang, the territory to which they had been assigned to maintain as a travel gang was now reduced by 82 miles.

This Board has reviewed the record in this case, and we find that the Claimants have not met their burden of proof that the Carrier violated the agreement when it subcontracted the work at issue.

The record reveals that the Company and the Organization entered into an agreement on November 10, 1975, marked as Carrier's Exhibit "A," which allows the Carrier to contract out the exact electrical welding work involved in this case. The parties agreed in that Agreement that some welding work would be performed by the Organization represented employees, but that allowing those employees to perform the work would not infringe on the Carrier's continuing to use contractors for that type of work.

This Board has thoroughly reviewed all elements of the agreement, and we cannot find any aspect of the agreement that was violated by the Carrier when it subcontracted the track repair work in this case.

Since the Claimants had the burden of proof in this case and they did not meet that burden, this Board must find that the claim should be denied.

AWARD

Claim denied.

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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.