Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31225
Docket No. MW-30863
95-3-92-3-706

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 Employes
(
(Southern Pacific Transportation Company
((Eastern Lines))

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

(1) The Agreement was violated when the Carrier assigned outside forces (Loram Equipment Company) to supervise a rail grinding train on the Rabbit Main Line between Shreveport and Houston, Texas beginning June 19, 1991 and continuing (System File MW-91-112/503-8-A SPE).

(2) The Agreement was further violated when the Carrier assigned outside forces (Loram Equipment Company) to perform machine operator and helper work (grinding surfaces flaws) between Mile Posts 230 and 1.5 between Shreveport and Houston, Texas beginning June 19, 1991 and continuing (System File MW-91-106/503-1-A).

(3) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intention to contract out said work as required by Article 36.

(4) As a consequence of the violations referred to in Parts (1) and/or (3) above, furloughed Welder R. L. Patterson shall be allowed one hundred and ninety-two (192) hours' pay, at his straight time rate, two hundred twelve (212) hours' pay at his time and one-half rate and he shall be credited with twenty-five (25) days for vacation qualifying purposes.

(5) As consequence of the violations referred to in Parts (2) and/or (3) above, furloughed Machine Operators S. E. Laird, B. F. Swearengin and furloughed Machine Operator Helpers G. Leos, A. Young and C. H. Dennison shall each be allowed one hundred and ninety-two (192) hours' pay, at their respective straight time rates, two hundred twelve (212) hours' pay, at their respective time and one-half rates and they shall each be credited with twenty-five (25) days for vacation qualifying purposes."

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.

The Organization filed the instant claim on behalf of the furloughed Claimants when on June 19, 1991, the Carrier hired an outside contractor to operate a rail grinding machine between Mile Posts 230 and 1.5 between Shreveport, Louisiana and Houston, Texas. The Organization argues that the Carrier abolished its rail grinding train operations and "allowed its machine operator forces to dwindle by attrition and force reductions." Then, the Organization argues that the Carrier improperly used outside forces to operate its rail grinding trains. Furthermore, the Organization contends that the Carrier did not give the proper advance written notice of its intention to contract out. The Claimants were fully qualified and readily available to do the job.

The Carrier denied the claim contending that the two rail grinders it owns "were combined for better productivity and are presently working on the Western Lines." The Carrier and its outside contractor, Loram, entered into an agreement to use the contractor to perform additional rail grinding on both the Western and Eastern Lines. The equipment that is used by Loram is not

owned by the Carrier and therefore, per its agreement with Loram, only Loram's employees can operate Loram's equipment. Furthermore, the Carrier argued that this type of work is not exclusive to the maintenance of way employees as was determined in PLB No. 4433, Award 6.

This Board has reviewed the record in this case and we find that this is merely one of a series of disputes brought by the Organization complaining about the Carrier's action in contracting out the grinding work to the same company. This Board has previously ruled in Third Division Awards 30180 and 30751 that the Carrier has a right to take such action. In Award 30180 this Board held:

> ".... the Carrier has established that outside forces have performed rail grinding work over many years and have done so on repeated occasions during the period that the Carrier's own rail grinders were in operation. Further, the Carrier makes a credible case that the Loram equipment here under review provides service not obtainable from the Carrier's own equipment. On either of these bases, the Board determines that the currently cited instance of use of Loram equipment is not 'within the scope of the applicable schedule agreement' and thus not covered by Article 36."

This Board cannot find any reason to rule differently in this case from the previous rulings of the Board. Therefore, the claim will be denied.

AWARD

Claim denied.

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 1st day of November 1995.