

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31279  
Docket No. MW-30200  
95-3-91-3-649

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(Union Pacific Railroad Company (former  
( Missouri 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 (Tweedy Contractors, Inc.) to perform track welder's work at Farm Servis, Mile Post 41.27, on August 6 and 7, 1990 (Carrier's File 910022 MPR).
- (2) The Agreement was further violated when the Carrier entered into the contract transaction described in Part (1) hereof without giving the General Chairman advance written notice thereof in accordance with Article IV of the May 17, 1968 National Agreement.
- (3) As a consequence of the violations referred to in either Part (1) and/or Part (2) above, Welder F. Korando and Welder Helper J. R. Crain shall each be allowed sixteen (16) hours' pay at their respective time and one-half overtime rates of pay."

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.

In its September 17, 1990 claim submitted to the Carrier, the Organization alleged that:

"On August 6, and 7, 1990, the carrier had on the property, a private contractor, Tweedy Contractors, performing work which is that of the MofW employees, especially that of claimants. The contractors were involved with cutting rail behind the Farm Servis, MP 41.27, on the Chester Sub. Said work was performed 8 hours per day, for a total of 16 hours."

On the property, K. M. Hunt, Manager Track Maintenance, provided a statement that:

"Tweedy Contractors did not cut any rail behind Farm Service at all on August 6&7 or any other day. They stack rail and removed about 60 feet of the old track there so we could get the section trucks in too load it as we need it."

Therefore, the Organization alleges that "[t]he contractors were involved with cutting rail" and the Carrier, through a statement, asserts that the contractor "did not cut any rail". Given that this is a contract dispute, the Organization has the burden of demonstrating all elements of its claim. Here, as the focal point of its dispute, the Organization must demonstrate as it alleges that "[t]he contractors were involved with cutting rail". In light of Manager Track Maintenance Hunt's statement that the contractor "did not cut any rail", this Board cannot find that the Organization has met its burden of demonstrating the work it put in dispute - "cutting rail" - was even performed by an outside contractor.

The claim must therefore be denied for lack of proof.

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 19th day of January 1996.