

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31314
Docket No. MW-30188
96-3-91-3-634

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 Employees
(Southern Pacific Transportation Company
(Western Lines)

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

- (1) The Agreement was violated when the Carrier assigned an outside contractor (Holland Company) to perform the welding and related handling work of twenty (20) quarter mile lengths of continuous welded rail for which the Carrier took delivery on August 13, 1990 in the vicinity of Montello, Nevada (Carrier's File #1/MofW 152-1143 SPW).
- (2) The Agreement was further violated when the Carrier assigned an outside contractor (Holland Company) to perform the welding and related handling work of twenty-two (22) quarter mile lengths of continuous welded rail for which the Carrier took delivery in early August, 1990 at various locations on the Oregon Division, Western Seniority District (Carrier's File #2/Mof W 152-1143).
- (3) The Agreement was further violated when the Carrier failed to give the General Chairman fifteen (15) days' advance written notice of its intent to contract out the work in Parts (1) and (2) above as required by Article IV of the May 17, 1968 National Agreement.

- (4) As a consequence of the violations referred to in Parts (1), (2) and/or (3) above, Maintenance of Way and Structures Department, Track and/or Welding Subdepartment employes C. A. Mutz, R. L. Quintero, M. R. Partin, L. J. Gerhart, R. D. Martinez, J. A. Vios, S. J. Dooley, A. G. Ramirez, J. A. Espana, M. L. Simental, J. S. Villalovoz, A. F. Irene, R. C. Mason, L. R. Madrigal, A. M. Montes, G. D. Trainor and S. D. Griesse shall each receive one hundred eight-nine (189) hours of pay, i.e., an equal proportionate share of the total number of man-hours expended by the outside contractor performing the work described in Parts (1) and (2) above, at their respective straight time 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.

The Carrier contracted for the purchase of welded rail from Colorado Foundry and Iron Corporation ("CF&I"). CF&I contracted with Holland Welding Company for the production of the rail. The Carrier was not a party to the contract between CF&I and Holland.

No subcontracting occurred here. See Third Division Awards 28561, and 29108 involving the Organization, the Carrier's Eastern Lines, and the same companies (CF&I and Holland). See Award 28561:

"In prior Awards, this Board has drawn a distinction between the purchase of material finished to specifications and the purchase of unfinished goods or component parts which require additional work by covered employees. See Third Division Award 27184 concerning preassembled track panels, Third Division Award 19645 concerning a prewired CTC bungalow, Third Division Award 23020 involving preassembled car retarders and Third Division Award 28195 involving creosote treated limber. In each case, the Board held the purchase of finished goods did not constitute subcontracting."

Awards 28561 and 29108 are not palpably in error and therefore govern this dispute. Here, as in those Awards, the Carrier purchased finished goods from CF&I. There was no demonstrated privity of contract between the Carrier and the producer of those goods, Holland, so as to avoid the result of those awards.

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 25th day of January 1996.