

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31676
Docket No. MW-31467
96-3-93-3-462**

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (**(Brotherhood of Maintenance of Way Employees**
(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 an outside concern (Wayne West) using five (5) trucks to perform truck driving work of hauling track panels from El Paso, Texas to Mile Post 499.27 near Sanderson, Texas on July 12 and 13, 1992 (System File MW-92-120/MofW 92-162 SPE).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with fifteen (15) day's advance written notice of its plan to contract out the above-described work in accordance with Article 36.
- (3) As a consequence of the violation referred to in Parts (1) and/or (2) above, Machine Operators L. E. Dube, D. D. Baker, J. A. Bobb, L. Harvey and D. L. Johnson shall each be allowed twenty-four (24) hours' pay at their respective time and one-half rate."

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.

On Sunday, July 12, 1992, a derailment occurred on the Carrier's track at Feodona, Texas, which blocked the main line, stopping all traffic. The Carrier used an outside trucking company to haul track panels from El Paso, Texas, to the derailment site. It took five trucks to haul the track panels.

The Organization filed this claim alleging that the hauling of track material is reserved for maintenance of way employees. It further alleges the Carrier failed to serve notice of its intent to contract out the work.

The Carrier argues that an emergency existed and because of the emergency it had the right to use the contractors to haul the track panels. The Carrier cites numerous awards to support its position. In particular, it cites Third Division Award 26677, involving the same parties with similar circumstances to this case. In that case the Board held as follows:

"OPINION OF BOARD: On February 6, 1984, a derailment occurred at Schriever, Louisiana, causing severe damage to the main track and an interruption in service. The main track was out of service on February 6 and 7, 1984. For purposes of repairing the damaged track, Carrier contracted with outside forces to haul paneled track and switches from Houston to Schriever, triggering the Claim herein. Claimants were all heavy duty Truck Drivers qualified to perform the work involved. On the two days of the activity to repair the track all Claimants were either being used to haul material to the site of the derailment or were otherwise fully employed.

The Organization argues that the outside forces should not have been called until Carrier exhausted the roster of available employees covered by the Agreement. Further, it is maintained that Carrier was obligated by Rule 36 to give fifteen days notice of its intent to contract out work. Even recognizing the fact of an emergency, the Organization insists that Claimants had the right to the work, on an overtime basis if necessary, prior to the utilization of outside forces.

Carrier avers that clearly an emergency existed on the two days involved herein. Under the circumstances, Carrier insists that it had great latitude in dealing with the crisis and acted appropriately. Additionally, Carrier notes that it would have been patently impossible to give the fifteen days notice specified in Article 36 under the circumstances of this emergency situation. Carrier also stated that it used five of the Claimants to do the work of hauling material to the site of the derailment.

It is clearly acknowledged that the circumstances in this dispute involved an emergency. This Board has held that in an emergency Carrier may take whatever action it deems appropriate to cope with its problems; see Third Division Awards 13316, 12777, 15597 and many similar holdings. It is also apparent that the provisions of Article 36 are inapplicable under the circumstances and were not violated by Carrier in this dispute. The Claim must be denied."

A careful review of the file in this case does not reveal a reason to deviate from the above cited Award.

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 29th day of August 1996.