

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 Employees
(Burlington Northern Railroad Company (former
(St. Louis & San Francisco Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces to perform Maintenance of Way work (dismantling and salvaging trackage) between Baxter Springs, Kansas and Picher, Oklahoma beginning September 28 and continuing (System File B-1133-1/MWC 93-01-11A SLF).**
- (2) 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.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Track Subdepartment employees B. Roark, W. T. Zimmerman, D. R. Hoffman, C. R. Schenherr, L. J. Coy, C. R. Clark, J. Wade, S. S. Casavecchia and G. Bounous shall each be compensated at their respective and appropriate rates of pay for an equal proportionate share of the total number of man-hours expended by the outside forces in the performance of the above-described work."**

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 were given due notice of hearing thereon.

On September 28, 1992, the Carrier hired an outside contractor to dismantle and remove rail, ties, bridge materials, other track materials, road crossing, and small buildings on the right of way between Mile Post 186.75 at Baxter Junction, Kansas, and Mile Post 181.64 at Picher, Oklahoma. The Organization filed the instant claim arguing that this type of track work is contractually reserved to the Maintenance of Way Department employees who have historically, traditionally and customarily been assigned to perform this work in the past. The Organization contends that the Carrier violated the Agreement when it hired the outside contractor because it failed to provide the General Chairman with the required advance written notice of its intent to subcontract. Furthermore, the Organization argues that the Claimants were willing and able to perform the work in question.

The Carrier denied the claim contending that the trackage in question had been abandoned; therefore, it had been sold to the salvage and dismantling company which, on its own, removed all rail, ties, switches, etc., some of which the Carrier bought back.

The parties being unable to resolve the issues at hand, this matter came before this Board.

This Board has reviewed the record in this case and we find that the Organization has not met its burden of proof that the Carrier violated the Agreement that it wrongfully contracted with an outside company to remove and dismantle material from the abandoned right of way. Therefore, the claim must be denied.

The record reveals that the Carrier received authority to abandon over five miles of track. In July of 1992, the Carrier invited bids for the removal and dismantling of all materials from the abandoned right of way. The work was performed in November of 1992.

As stated above, the property involved had ceased being part of the Carrier's operation two years prior to the work that was performed removing the material from the right of way. The Agreements involved here pertain to the work of the Carrier's business of operating a railroad and not work performed on abandoned property. As was stated in Award 19994, "The critical question is not continued ownership of the salvaged rails and real property, but the purpose for which the work was intended; was the work performed related to the operation and/or maintenance of the railroad or not..." See also Public Law Board No. 4768, Award 48 which held that the line was abandoned and was obviously no longer "used in the operation of" the Carrier.

For all of the above reasons, the claim must 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 13th day of November 1997.