

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36069
Docket No. MW-34869
02-3-98-3-586**

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Clinchfield Railroad)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Orgotherm Welds, Inc.) to perform Welding Subdepartment work (removing joint bars, leveling rail and setting molds for weld compound for rail ends to be welded together) at Mile Post 138.0, Erwin, Tennessee to Mile Post 173.0, Kona, North Carolina and at Mile Post 234, Thermal, North Carolina to Mile Post 207, North Cove, North Carolina on June 2 through July 18, 1997 [Carrier's Files 12(97-2192) and 12(97-2193) CLR].**
- (2) The Agreement was further violated when the Carrier failed to make a good-faith effort to reduce the incidence of contracting out scope-covered work and increase the use of its Maintenance of Way forces as required by Rule 48 and the December 11, 1981 Letter of Understanding.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Messrs. R. E. White, W. N. Williams, B. R. Peterson, R. L. Stephens, M. L. Thomas and J. L. Fields shall each be allowed two hundred seventy-two (272) hours' pay at the applicable welder's 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 were given due notice of hearing thereon.

During late Spring and early Summer 1997, the Carrier undertook the welding of approximately 1100 joints in the rail created by Production Gang installation of new ties and rail on the Blue Ridge Subdivision of the Appalachian Service Lane, on the former Clinchfield Railroad (CRR). Because installation of new ties and rail requires such a large number of welds, additional local welding positions were advertised and filled and all Welders with seniority on the CRR, including the Claimants, were assigned to this work. Following timely notice to and discussions with the General Chairman, the Carrier elected, over the objections of the General Chairman, to contract for and utilize additional Welders from an outside contractor to work along with the BMW-represented Claimants in order to expeditiously complete this project.

Six days after the May 27 conference concerning the Carrier's notice, i.e., on June 2 and continuing through July 18, 1997, outside forces from Orgotherm Welds, Inc. were assigned to perform the welding work of removing joint bars, leveling rail and setting molds for weld compound for rail ends to be welded together from Mile Post 138.0, Erwin, Tennessee, to Mile Post 173.0, Kona, North Carolina. It is not disputed that three employees of the outside contractor, working alongside Claimants R. E. White, W. N. Williams and B. R. Peterson, expended 272 hours each performing said rail welding work. Concurrently, three other employees of the outside contractor, working alongside Claimants R. L. Stephens, M. L. Thomas and J. L. Fields, expended 272 hours each performing ordinary rail welding work from Mile Post 234, Thermal, North Carolina, to Mile Post 207, North Cove, North Carolina.

This dispute was initially filed and progressed as two separate claims during the on-property handling, i.e., one claim for Claimants R. E. White, W. N. Williams and B. R. Peterson for work of the contractor from Mile Post 138.0, Erwin, Tennessee, to Mile Post 173.0, Kona, North Carolina, and another claim for Claimants R. L. Stephens, M. L. Thomas and J. L. Fields for work of the contractor from Mile Post 234, Thermal, North Carolina, to Mile Post 207, North Cove, North Carolina. Inasmuch as the pivotal issues central to both claims are identical, they have been appropriately combined upon presentation to the Board. See First Division Award 25212.

The claims are premised on an alleged failure by the Carrier to exhaust good-faith efforts to minimize subcontracting of scope-covered work, as required by the December 11, 1981 Hopkins-Berge Letter of Understanding and an alleged violation of Rule 48-CONTRACTING OUT, which reads as follows:

"In the event a carrier plans to contract out work within the scope of the applicable schedule agreement, the carrier shall notify the General Chairman of the organization involved in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than 15 days prior thereto.

If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the carrier shall promptly meet with him for that purpose. Said carrier and organization representatives shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached the carrier may nevertheless proceed with said contracting, and the organization may file and progress claims in connection therewith.

Nothing in this Rule shall affect the existing rights of either party in connection with contracting out. Its purpose is to require the carrier to give advance notice and, if requested, to meet with the General Chairman or his representative to discuss and if possible reach an understanding in connection therewith. (Article IV, May 17, 1968, National Agreement.)"

As handled to stalemate on the property, the claims apparently concede notice and conference, but allege that the Carrier failed to adequately justify its decision to

contract for additional Welders and was "disingenuous" when it asserted unavailability of men and inadequacy of equipment necessary to timely complete the welding project in dispute. For its part, the Carrier declined the claim on grounds that: (1) "the Clinchfield welding roster was exhausted during the period of your claim" (2) "(c)onsequently, sufficient qualified employees or equipment were not available to do the work" and (3) "claimants did not suffer a loss of work or wages during the period of the claim."

Our review of the record evidence persuades us that denial of these claims is supported by the following authoritative precedent:

Third Division Award 16629

"Carrier did not claim that it lacked adequate laid up equipment to perform the work. However, Organization did not deny on the property that Carrier did not have forces laid off in sufficient number and skill to do the work. Organization argues that Rule 2(f) is intended to operate as an exception to the reservation of work only if there is proved lack of both equipment and men.

We do not agree; we said in Award 15011 (Wolf) in regard to the same question between the same parties as here:

'The Rule requires that when there are not both men and equipment available the work may be contracted out. The sense is that if Carrier has both the men and equipment it ought to use them to do the work. If either is missing it does not have both, and may then contract the work.'"

Third Division Award 29221

"Regarding the merits of the Carrier's decision to contract the work in question the Board finds its decision considered and within the permissible parameters for contracting encompassed in Rule 2. In this connection, there are several significant factors which, in combination with each other, justify the contracting under the unique circumstances of this case. They include (1) the fact no employees were on furlough in the seniority district,

(2) the fact all active employees and equipment were committed elsewhere, and (3) a certain degree of urgency to the project. The Organization did argue that the Carrier could have reorganized, reallocated, and rescheduled the work to make the Carrier forces available. The Carrier responded with validity that the project was driven by shipper concerns, and a delay would have resulted in a loss of business. We also note that the sheer magnitude of the project (3-4 months) speaks to the practicalities of delaying other projects in order to utilize Carrier forces.”

Third Division Award 29204

“In the final analysis, Carrier concluded that since this was a large project, there was a certain urgency in getting it completed, and current forces were elsewhere employed, it was necessary to utilize outside forces. Under all of the circumstances present here, this Board cannot dispute that decision.”

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 18th day of June, 2002.