

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38243
Docket No. MW-37305
07-3-02-3-321

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Texas Mexican 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 (Railworks and W. T. Byler Construction Company) to perform Maintenance of Way and Structures Department work (install main line switches and related work) between Mile Posts 00.00 and 2.00 in Laredo, Texas beginning August 13, 2001 and continuing (System File EP-2001-42-TM/168).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper notice of its intent to contract out the work in question and failed to exert a good-faith effort to increase the use of Maintenance of Way forces and reduce the incidence of employing outside forces pursuant to Rule 29 and the December 11, 1981 Letter of Agreement.**
- (3) As a consequence of the aforesaid violations referred to in Parts (1) and/or (2) above, Claimants P. Benavides, E. Lara, R. Garza, T. Vasquez, J. Lopez, G. Vasquez, V. Moncivais, A. Vira, J. Garcia, L. Serna, J. Sciaraffa, N. Saenz, J. Rodriguez, M. Paz, A. Garcia, R. Couling and A. Jimenez shall now each be compensated at their respective rates of pay for an equal and proportionate share of the total number of man-hours expended**

by the outside forces in the performance of the aforesaid work beginning August 13, 2001 and continuing.”

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.

The mainline switch installation work giving rise to the claim is that related to a major mainline and bridge rehabilitation project.

Claims protesting the Carrier's engagement of outside contractors for work involving this rehabilitation project have been the subject of five prior cases advanced to the Board by the Organization. In all five instances, each involving a phase of the rehabilitation project, claims challenging the contracting out of work were denied. See Third Division Awards 37008 (installing ties and related work) 37009 (removal, replacement and related repair work at bridges and culverts) 37963 (installing bridge caps and bridge shims) 37986 (installing ties) and, 37992 (replacing, installing and welding rail). The only difference between the facts and arguments in the instant claim and the denial Awards that issued in the five prior cases is the type of work, which here involves the installation of main line switches and related work.

We studied the facts and arguments of the parties and the rationale for the decisions of the Board in each of the prior cases. The work here at issue was covered by the same contracting notices and conferences as in the prior disputes. The positions of the parties in those disputes are not unlike those advanced to the Board in the instant claim.

While we are not bound to follow the decisions of the above mentioned Awards, we find that they are without question well founded. Clearly, as the findings in those prior Awards point up, nothing of record supports the argument that the Carrier was precluded by applicable Agreement language from contracting out the work at issue under the circumstances existing in this major mainline and bridge rehabilitation project, an overhaul program that could only be accomplished by using outside forces in a timely and cost effective manner.

In light of the above considerations and overall study of the record the Board is constrained to conclude, as the Carrier contends, that the claim before us is not a new grievance, but rather an attempt to seek a reversal of the decisions rendered in the above mentioned Awards. We find no reason to do so. Further, as has been stated in numerous prior Awards, it is essential that disputes once heard and settled by the Board should stay settled unless it can be shown by competent and compelling evidence that a clear change exists in facts and circumstances that gave rise to a prior claim or it can be shown that the decision was palpably wrong.

The Board will accordingly follow the prior decisions involving this particular contracting out of work program in the absence of a showing of error as relates to a consideration of the facts and arguments of the parties, and hold that the instant claim likewise 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 18th day of July 2007.