

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21349
Docket Number MW-21500

John H. Dorsey, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Burlington Northern Inc.

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

(1) The Carrier violated the Agreement when, prior to notice to and discussion with General Chairman Funk, and without agreement with General Chairman Funk, it contracted repairs to Crawler Tractor BNX 71-0602 to outside forces (System File P-P-205C/MW-84(c) 11/15/74)

(2) Traveling Equipment Maintainers C. Lassiter and Jack Wieneck each be allowed eight (8) hours' pay at their respective straight-time rates because of the aforesaid violation.

OPINION OF BOARD: Under date of June 19, 1974, Carrier gave notice to the Organization's General Chairman that:

Crawler Tractor BNX 71-0602 at Vancouver Roadway Equipment Repair Shop for repair.

The roller frame on this tractor is twisted and cracked. To repair this roller frame it will be necessary to line the frame before it is welded. The Vancouver Shop is not equipped to handle that type of work and it will be necessary to have this repair made by contract.

The General Chairman admits that he received the notice on June 20, 1974; and, on the same date he informed Carrier: "We desire conference on this matter."

The tractor had been taken out of service on June 18, 1974.

In letter dated July 2, 1974, addressed to Organization's Vice General Chairman, Carrier stated:

This will refer to conference held July 2, 1974, at which time your representative Mr. R. Richardson discussed with Mr. R. W. Madsen of my staff Carrier's notice of June 19, 1974 of intent to contract repairs to Crawler Tractor BNX 71-0602.

At this conference Carrier advised as this machine was needed for fireguard work and as the Carrier was not equipped to line the twisted frame, it was necessary that this work be immediately performed by contract.

The tractor was taken to an outside contractor on July 1, 1974, for repair.

The specific provision of the Agreement relative to Carrier's contracting to have work performed by an outside contractor reads:

NOTE to Rule 55: The following is agreed to with respect to the contracting of construction, maintenance or repair work, or dismantling work customarily performed by employees in the Maintenance of Way and Structures Department:

Employees included within the scope of this Agreement - in the Maintenance of Way and Structures Department, including employees in former GN and SP&S Roadway Equipment Repair Shops and welding employees - perform work in connection with the construction and maintenance or repairs of and in connection with the dismantling of tracks, structures or facilities located on the right of way and used in the operation of the Company in the performance of common carrier service, and work performed by employees of named Repair Shops.

By agreement between the Company and the General Chairman, work as described in the preceding paragraph which is customarily performed by employees described herein, may be let to contractors and be performed by contractors' forces. However, such work may only be contracted provided that special skills not possessed by the Company's employees, special equipment not owned by the Company, or special material available only when applied or installed through supplier, are required; or when work is such that the Company is not adequately equipped to handle the work, or when emergency time requirements exist which present undertakings not contemplated by the Agreement and beyond the capacity of the Company's forces. In the event the Company plans to contract out work because of one of the criteria described herein, it shall notify the General Chairman of the Organization in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than fifteen (15) days prior thereto, except in "emergency time requirements" cases. If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the Company shall promptly meet with him for that purpose. Said Company

and Organization representative shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached the Company may nevertheless proceed with said contracting, and the Organization may file and progress claims in connection therewith. (Emphasis supplied)

The ultimate issue in this dispute and the respective positions of the parties are framed by the parties in the exchange of the following correspondence: (1) In a letter from the General Chairman to Carrier dated July 17, 1974, he states:

The repair of this roller carriage is not something that has not been performed within the shop at Vancouver, Washington. No special equipment is needed that is not possessed by the Railway Company, nor are there skills involved that employees working as traveling maintainers do not possess. Therefore, we cannot agree that this work should be contracted out.

and (2) Carrier's reply to that letter dated July 31, 1974, in which it is stated:

Your contention that the Vancouver repair shops were equipped to make the necessary repairs to this tractor is not correct. In repairing the roller frame it is necessary to line the frame before it is welded and the Vancouver shop does not possess the necessary lining equipment.

Carrier raised no issue as to Claimants having the skills to perform the work. Therefore, the sole issue is whether Carrier owned the equipment required to repair the tractor.

The record made on the property does not contain substantial evidence of probative value that Carrier owned the required equipment to repair the tractor -- Organization's mere assertions that it did are not of such character as to satisfy the burden of proof.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Claim must be denied for lack of proof.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1976.

