

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

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10175) that:

1a. Carrier violated the current Timber Treating Plant Agreement when it failed and/or refused to permit employes of the Centralized Tie Treating Plant in Somerville, Texas to perform work which they have performed since 1942, and permitted persons other than employes covered by this agreement to perform these historically assigned duties and,

1b. The following Claimants and/or their successors shown now in Class 2 and Class 3 be compensated eight (8) hours per day for February 27, 1986; March 3, 10, 17 and 25, 1986; April 2 and 4, 1986; in addition to any other compensation already received on these dates and continuing until violation ceases and the work returned to class from which it was removed.

David T. Jimenez, Treating Engineer, at a rate of \$12.45 per hour.

Echmond H. Brantley, Locomotive Operator, at a rate of \$11.90 per hour.

Roman B. Moore, Jr., Locomotive Foreman, at a rate of \$12.22 per hour.

Michael O. Mendoza, Preservative Pumper, at a rate of \$11.99 per hour.

Ernesto M. Espinoza, Stationary Fireman, at a rate of \$12.05 per hour.

2a. Carrier violated the current Timber Treating Plant Agreement when it failed and/or refused to permit employes of the Centralized Tie Treating Plant in Somerville, Texas to perform work which they have performed since 1942, and permitted persons other than employes covered by this agreement to perform these historically assigned duties and,

2b. The following Claimants and/or their successors shown now in Class 4 be compensated eight (8) hours per day for February 27, 1986; March 3 and 25, 1986; April 2 and 4, 1986 and continuing until violation ceases and the work returned to class from which it was removed.

L. J. Arredondo, Foreman, at a rate of \$12.33 per hour.
Edwin H. Morave, Sawmill Operator, at a rate of \$12.25 per hour.
Benino O. Orozco, Lift Truck Operator, at a rate of \$11.99 per hour.
L. D. Schoppe, Assistant Sawmill Operator, at a rate of \$11.81 per hour.
Frank G. Maldonado, Helper, at a rate of \$11.34 per hour.
Leon M. Orozco, Helper, at a rate of \$11.34 per hour.
Aldie R. Brinkman, Machinist, at a rate of \$13.03 per hour.

3a. Carrier violated the current Timber Treating Plant Agreement when it failed and/or refused to permit employees of the Centralized Tie Treating Plant in Somerville, Texas to perform work which they have performed since 1942, and permitted persons other than employees covered by this agreement to perform these historically assigned duties and,

3b. The following Claimants and/or their successors shown now in Class 5 be compensated eight (8) hours per day for February 27, 1986; March 3, 10, 17 and 25; April 2 and 4, 1986.

Santiago Arredondo, Foreman, at a rate of \$12.33 per hour.
Feveriano M. Reyes, Helper, at a rate of \$11.34 per hour.
Rufus Lange, Jr., Lift Truck Operator, at a rate of \$11.99 per hour.
Antonio Negrete, Checker, at a rate of \$11.99 per hour.
Leon Lister, Lift Truck Operator, at a rate of \$119.99 per hour.
Rudolph D. Fupak, Checker, at a rate of \$11.99 per hour.
John J. Schoppe, Helper, at a rate of \$11.34 per hour."

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 employees 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.

In February 1986, the Carrier took delivery of creosote treated lumber which it had purchased from Conroe Creosoting Company. Claimants, who are employed at the Carrier's Centralized Tie Treating Plant in Somerville, Texas, contend the work of treating of lumber is reserved to them, and the Carrier improperly subcontracted this work to Conroe. The employees at the Somerville plant are engaged in the receipt, drying, treatment and loading of cross ties and timber lumber. The treatment of this lumber is performed in four (4) cylinders which, at the time of this Claim, were used to capacity twenty-four hours a day, seven days a week.

The Organization asserts that redirecting untreated lumber to Conroe is a violation of Rule 1-D which governs contracting out work. It argues this Rule requires the Carrier to give the Organization prior notice of its intent to contract out work, which was not done in this case. Furthermore, it says the Carrier would have had the capacity to treat the lumber in question had it converted a cylinder which had been previously used for treating salt and pena lumber. The Carrier states that such a conversion would not have been economically feasible, even if it were possible.

The Carrier denies the work in question is reserved to Claimants. It interprets the Agreement to give Claimants the right to treat only that lumber which is in the plant. It further points out the Carrier did not direct lumber which it had already owned to Conroe for treatment. Rather, as evidenced by invoices made a part of the record, the Carrier purchased treated lumber from Conroe. It argues this is nothing more than the exercise of its "right to purchase" materials from outside vendors. The Carrier alleges it had engaged in similar purchases on many occasions since 1979. The Organization does not deny this allegation, but claims it was unaware of earlier transactions and, therefore, its failure to file claims should not be considered as acquiescence.

The Board has considered numerous claims involving the purchase of a finished product which, if it had been purchased unfinished or in component parts, would have required the work of covered employees. See Third Division Award 27184 concerning preassembled track panels and Third Division Award 19645 concerning a prewired CTC bungalow. In Third Division Award 23020, involving preassembled car retarders, we held:


"This is not the situation where the unassembled equipment was on the property and then sent out for assembling. If that was the case, the rights of the employees under the Scope Rule would attach. Here these rights have not yet attached. In short, the purchasing of a finished product, in the circumstances presented here, cannot be viewed as the contracting out or the farming out of bargaining unit work."

It is significant that the Carrier's invoices show it purchased treated lumber rather than having lumber it had purchased elsewhere treated at Conroe. Under these circumstances, we must conclude the Carrier exercised its right to purchase a finished product, and the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1989.