

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Denver and Rio Grande Western Railroad Company

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

(1) The Carrier violated the Agreement when it assigned or otherwise permitted outside forces to perform track maintenance work in the vicinity of the depot in Salt Lake City, Utah beginning August 15, 1986 (System File D-86-43/MW-8-87).

(2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it did not give the General Chairman advance written notice of its intention to contract said work.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the Claimants listed below shall each be allowed pay at their respective rates for an equal proportionate share of the total straight time and overtime man-hours worked by the Castleberry Railroad Maintenance and Construction Company in performing the work referred to in Part (1) above.

The Claimants are:

Crook, Jeffrey W.	Burgess, G. S.
Nielson, Bryce B.	Ruckman, Thomas L.
Reeves, Arthur S.	Badura, Garth P.
Archuleta, Robert D.	Snow, Douglas
Peterson, A. E.	Angell, Steve W.
Braselton, Milton C.	Caro, Jose M.
Montoya, Gene T.	Sugino, Gary D.
Martinez, Ray C.	Deuel, Brent V.
Bell, Brent L.	Crisp, Floyd Wm.
Archuleta, David L.	Theobald, J. Dee
Montoya, Ralph P.	Mata, Robert
Gray, Donald L.	Cutler, Rex P.
Lund, Alan O.	Harris, Kevin R.
Gonzales, Jose L.	Giles, T. J.
Baker, Shyrel J.	Valdez, L. B.
Tuttle, Brent	Archuleta, W. D.
Krug, Layne A.	Montague, A. W.
Ivie, Carl J.	Draper, R. D.
Nelson, Michael J.	Golden, M. G.
Jarvis, Gary W.	Jones, R. T.
Sanchez, George H.	Armburst, A. J.
Sires, Robert W., Jr.	Aberton, Mark J.
Mercer, David C.	Montano, John"
Cole, Wesley F.	

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.

This dispute concerns the Organization's assertion that the Carrier violated the relevant Agreements by using outside forces to perform certain track maintenance work. Castleberry Railroad Maintenance and Construction Company was given a contract to perform maintenance work on the Carrier's tracks between First and Fourth South in the vicinity of Salt Lake City, Utah which work commenced on August 15, 1986. No written notice was given by the Carrier to the Organization's General Chairman concerning the plan to contract out the work. The Carrier asserts that it had no control over the contracted work because of a lease agreement between it and Amtrak which gave use of the tracks to Amtrak and which obligated Amtrak to make any repairs or improvements to the tracks. According to the Carrier, the Carrier did not enter into the contracting arrangement with Castleberry. However, although requested by the Organization, the Carrier did not provide the Organization with a copy of the lease between it and Amtrak.

Third Division Awards 20895 and 19623 are controlling. The Carrier's defense to the Claim was to rely upon the terms of the lease between it and Amtrak. However, although requested by the Organization, the Carrier failed to produce a copy of that lease. Under Awards 20895 and 19623, having failed to produce the lease in support of its defense, the Carrier's position cannot prevail. Inasmuch as the record demonstrates that the contractor utilized nine employees (one foreman, one machine operator and seven laborers) to perform the work, payment under this award shall be limited to the same number and classification of Claimants.

A W A R D

Claim sustained in accordance with the Findings.

Form 1
Page 3

Award No. 28229
Docket No. MW-28306
90-3-88-3-61

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1990.