

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(Soo Line Railroad Company (formerly Chicago, Milwaukee,  
St. Paul and Pacific Railroad Company)

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

(1) The Carrier violated the Agreement when it assigned outside forces to perform track repair work at Beloit, Wisconsin from September 10 through November 27, 1985, both dates inclusive (System Files C #33-85/800-46-B-221 and C #37-85/800-46-B-221).

(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 aforesaid violations, Track Department employees L. M. Alf, R. A. Boeck, W. L. Byrd, R. B. Lightheart, L. A. Porter, W. L. Reppin and F. E. Truesdill shall each be allowed eight (8) hours of pay at their respective rates for each work day within the claim period referred to in Part (1) hereof."

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.

The Organization filed a Claim contending that its Agreement was violated when Carrier used the services of Wisconsin Railroad Service Corporation to renew certain trackage servicing Colt Industries at Beloit, Wisconsin.

From the outset Carrier did not dispute that it did not give an Article IV notice on contracting, that the work was performed by the Contractor or the amount of time outside forces worked on the project. However, Carrier maintained that the trackage involved had been leased to Colt Industries and it had no control over the renewal project. It contended that the entire transaction was between Colt Industries and Wisconsin Railroad Service Corporation and that the Soo Line expended no funds whatsoever in the renewal. In support of this contention Carrier furnished the Organization with a statement from an individual (no title shown) assigned to its Real Estate Department which it alleges confirmed the existence of the lease arrangement.

We have examined Carrier's proof that the trackage was leased to Colt Industries at the time of the renewal project and do not find it persuasive. If in fact a lease existed which actually transferred the tracks to Colt Industries it would be quite simple to provide copies. Instead what is offered is a two paragraph memo which merely states that a lease agreement existed. This statement, standing alone, is nothing more than unsupported assertion. It is not proof. Moreover, one week after the Contractor completed the renewal, Maintenance of Way forces resumed maintenance of the trackage involved.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 27th day of April 1990.