

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes)
(Southern Pacific Transportation Company (Eastern Lines))

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

(1) The Agreement was violated when, beginning December 7, 1987, the Carrier assigned outside forces (Native Veneer Company, Inc.) to dismantle track, stack rail and remove trim such as angle bars, spikes and tie plates from existing trackage at the following locations on the Houston to Shreveport main line: M.P. 223.9, M.P. 220.9, M.P. 201.3, M.P. 191.1 M.P. 189.6, M.P. 166.8, M.P. 120.4, M.P. 110.4, M.P. 70.2, M.P. 24.5, M.P. 13.2 and other team tracks and sidings on that main line (System File MW-88-23/467-76-A).

(2) The Carrier also violated Article 36 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, furloughed Machine Operators J. Terrazas, A. H. Villarreal, D. W. Stansberry, furloughed Welder C. R. Hunter, furloughed Welder Helpers W. McGilbert, W. S. Donald, furloughed Laborers D. G. Pena and D. Scott shall each be allowed pay for six hundred thirty-two (632) hours at their straight time rates and four hundred fourteen (414) hours at their respective time and one-half rates."

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 this matter, there is no dispute that the Carrier entered into a sale agreement with an outside company to sell 42.26 miles of scrap trackage and rail on an "as is, where is" basis. This involved dismantling and removing the material from its location on Carrier property. The outside company in turn contracted with another company to perform the actual work.

The Carrier did not provide notice of this transaction in the manner required in other circumstances under Rule 36, Contracting Out.

The Organization provided evidence, through numerous written statements from employees, that track removal work is and has been regularly performed by employees represented by the Organization.

There is strong support for the Organization's view that work of this nature, if performed under the Carrier's control for its own purposes, would properly be assigned to the Claimants or other employees in identical situations. Here, however, the Board has no difficulty in determining that "Contracting out" by the Carrier is not involved here. There is no demonstrated rule prohibition of the sale of property by the Carrier. As previously found by the Board in Third Division Award 24280:

"The Carrier undertook to enter into the sale of scrap track ties to an outside firm, Wiggins Landscaping. The contract sale provided that the purchaser would collect the scrap ties, in place on Carrier's property. Insofar as the transaction consisted of this undertaking, there is no rule violation and specifically no requirement of the Carrier to follow the detailed notice procedure of the Article IV, contracting Out, of the May 17, 1968 National Agreement [encompassed in Rule 36]."

The Board finds this reasoning fully applicable here. Award 24280 partially sustained the Claim therein, but only to the extent that a portion of the material dismantled by outside forces was retained in the Carrier's possession. There is no evidence here that any of the material was intended for future use by or resale to the Carrier. There is nothing to suggest that the Carrier did other than sell its property outright, even though it was sold in place.

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 16th day of November 1990.