

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

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

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 the work of welding rail for use on the Carrier's right of way beginning on or about April 4, 1989 and thereafter on a continuing basis (System File MW-89-40/480-35-A SPE).

(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, the Claimants listed below shall each be allowed pay for an equal proportionate share of the total number of man-hours expended by outside forces in performing the work referred to in Part (1) above beginning April, 1989 and continuing until the violation is corrected.

'T. J. Cox, Foreman
A. J. Kortz, Lead Welder
D. F. Colley, Welder
A. E. Rodriguez, Grinder
L. D. Anderson, Grinder Helper
R. K. Lankford, Foreman
L. H. Lipp, Machine Operator Helper
R. Casanova, Machine Operator Helper
J. O. Wooley, Welder
H. Owdley, Grinder
F. H. Clark, Grinder
C. L. Schumacher, Grinder Helper
J. H. Richards, Machine Operator
C. Meier, Machine Operator.'"

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 employee 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.

With the closing of its rail welding plant at Wallisville Road in Houston, Texas, Carrier began purchasing continuous welded rail from the C.F.I. Corporation. C.F.I. Corporation, in turn, had a contract with the Holland Welding Company, which performed the welding of the rail. The Organization contends that Carrier consequently contracted out work that rightfully belongs to Claimants, nearly all of whose jobs were abolished as a result of the plant closure.

In Third Division Award 28561, a case involving the same parties and the same set of facts as in the instant dispute, the Board noted that in prior Third Division Awards 27184, 23020, and 28195, the Board held that the purchase of finished goods did not constitute subcontracting. The Board, in turn, found no privity of contract between the Holland Welding Company and Carrier. The Claim was therefore denied.

The instant Claim is directly on all fours with the facts of Award 28561. Since the same issue of fact and contract interpretation was settled in that Award, this Board is barred, under the doctrine of res judicata, from adjudicating it again. Thus, this Claim must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover, Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1992.