NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Form 1

Award No. 29858
Docket No. MW-30045
93-3-91-3-454

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Terminal Railroad Association of St. Louis

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

(1) The Carrier violated the Agreement when it assigned outside forces (Ballmeier, Inc.) to unload panelized switches from rail cars at 14th Street in St. Louis, Missouri and at Track 82, NEWB in Madison Yard, Madison, Illinois on May 29 and June 8, 1990 (System File 1990-13/013-293-14).

(2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intention to contract out the work referenced in Part (1) above.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, System Machine Operators D. Stogner and R. Gower shall each be allowed an equal proportionate share of sixteen (16) hours of pay at their straight time rate and two and one-half (2 1/2) hours' pay at their time and one-half rate."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

Claimants are large machine operators of the T. R. R. A., and were assigned as such at the time this dispute arose.

On May 29 and June 8, 1990, Carrier rented a Road-type crane from a rental agency in order to unload panelized switches from rail cars located at 14th Street in St. Louis, Missouri, and at Track 82, NEWB in Madison Yard, Madison, Illinois. Carrier asserts that it rented the crane "because all Carrier-owned track-type cranes were assigned to other projects."

The rental agency required Carrier to utilize a "qualified and experienced" Road-type Crane Operator employed by the rental agency as a condition of the rental. Carrier assigned four Maintenance of Way employees to work full time with the Road Crane Operator while unloading the panelized switches on both claim dates. All hookups, hand signals and placement of subject switch panels was performed by the four Maintenance of Way Employes represented employees assigned to work with the Road Crane Operator.

On July 19, 1990, the Organization submitted a claim on behalf of Claimants claiming Carrier "allowed other than Brotherhood of Maintenance of Way Employees to unload the panelized switches from rail cars." The Organization maintained that "This work has always been performed by T. R. R. A. track machine operators." Further, the Organization submitted that the Carrier did not give it proper notice with relation to the "contracting out". The Organization requested that the Claimants be compensated for eight hours at the regular rate of pay for May 29, 1990, and eight hours regular rate of pay and two and one-half hours at time and one-half for June 8, 1990.

Carrier denied the claim arguing that, "Past practice has been to rent equipment that Carrier does not own, infrequently uses, or to supplement existing equipment that is in use." Carrier further stated that, "We have, many times each year, rented trucks, cranes, and specialized equipment." With relation to the 15 days prior notice, Carrier stated that, "We do not normally know in advance of a need for equipment rental; therefore, it would be impossible to meet the requirements of the Agreement...."

The crux of this issue is whether Carrier violated the Agreement when it rented a crane, without prior notice to the Organization, and complied with a condition of the rental agreement that an Operator from the rental agency accompany and operate the crane. Carrier pointed out, without rebuttal, that for at least six years it has rented equipment without protest from the

Organization. The Organization asserted that "Only MW employees have operated rented equipment", however, the Organization offered no probative evidence to substantiate this bare assertion.

The record shows that the Parties never have mutually applied the subcontracting notice provisions to situations such as that presented here, nor has the Organization met its burden of showing reservation of this work to Agreement-covered employees by contract language or past practice. Since no violation is proven on this record, this claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin Interim Secretary to the Board

Dated at Chicago, Illinois, this 26th day of October 1993.