

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31266
Docket No. MW-30934
95-3-92-3-800

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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 Agreement was violated when the Carrier assigned an outside concern (Core Trucking) to perform truck driving work between the Houston Signal Shop and Miller Yard at Dallas, Texas on September 16, 1991 (System File MW-91-134/504-14-A SPE).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with fifteen (15) days' advance written notice of its plan to contract out the above-described work in accordance with Article 36.
- (3) As a consequence of the violations referred to in either Parts (1) and/or (2) above, Heavy Duty Truck Driver D. D. Baker shall be allowed eight (8) hours' pay at his straight time rate of pay."

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.

The Board has carefully revisited the issue of contracting out wherein the Organization alleges that the Carrier has utilized an outside trucking firm for work reserved by Agreement to the employees. In the specifics of this instant case, the Organization alleges that the Carrier utilized Core Trucking Company on September 16, 1991, to haul a signal house and other signal hardware from the Houston Signal Shop to Miller Yard in Dallas, Texas.

Our review of this instant Claim finds that it differs only slightly from that which we considered in Third Division Award 31260. We find those differences do not alter our conclusion. Article 22 states that "when heavy duty trucks ... are regularly used to transport material ... such trucks will be operated by Roadway Machine Operators...." During the on-property dispute the Organization asserted that the interpretation of the parties was that this belonged to the employees except where limited by Section 2, wherein no Claim would be made.

Section 2 of Article 22 pertains to the use of heavy duty trucks when used by "Water Service, Bridge and Building or Signal Department, or any other craft, when used in connection with transporting men, equipment or material used in connection with other crafts or classes of employees." Carrier's argument is that since this signal equipment was transported for the use of the Signal Department the Claim by the Maintenance of Way is misplaced. In fact, if anyone had claim to the work it was the Brotherhood of Railroad Signalmen, as this equipment would relate solely to their Agreement.

The Board finds in this evidence sufficient probative support for the Organization's allegation that the Carrier violated the Agreement. First, there are Organization statements that this work has been regularly performed for over twenty years. Second, the language of the Article 22, Section 1 clearly gives the work to the Maintenance of Way with the stated exceptions listed in Section 2. Third, this is neither one of the exceptions stated, nor is the supportive statement from Signalman Marrs that the Signal Department moved signal houses for years on point. That is due to the fact that such movement is permitted by Section 2. In fact, the instant case includes additional statement from Signalman Kidder supporting the Organization's position. Fourth, the supportive documentation presented by the Carrier lacks the persuasive import to effectively refute the Organization for the reasons clearly stated in our Third Division Award 31260. Lastly, this Board finds for the reasons given in Award 31260, that the Claim must be sustained.

Form 1
Page 3

Award No. 31266
Docket No. MW-30934
95-3-92-3-800

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of November 1995.