

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31307
Docket No. MW-30988
95-3-92-3-913

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman 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 the Carrier assigned outside forces (Loram Equipment Company) to perform machine operator and helper work (grinding surface flaws) on various tracks between Avondale and Houston, Texas beginning September 9, 1991 and continuing (System File MW-92-4/MofW 152-1182 SPE).
- (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 said work as required by Article 36.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, furloughed Machine Operators S.E. Laird and B.F. Swearengin, and furloughed Machine Operator Helpers G. Leos, A. Young and C.H. Dennison shall each be allowed three hundred and thirty-six (336) hours' pay at their respective straight time rates, four hundred twenty-four (424) hours' pay at their respective time and one-half rates and they shall each be credited with forty-two (42) days for vacation qualifying purposes, all on a continuing basis."

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 facts and positions of the Parties in this case are essentially identical to those in Third Division Award 30180, involving these same Parties. In that case, the Board held as follows:

"... The Board concurs with the Organization that it need not meet an 'exclusivity' test to advance its Claim to rail grinding work. However, the Carrier has established that outside forces have performed rail grinding work over many years and have done so on repeated occasions during the period that the Carrier's own rail grinders were in operation. Further, the Carrier makes a credible case that the Loram equipment here under review provides service not obtainable from the Carrier's own equipment. On either of these bases, the Board determines that the currently cited instance of use of Loram equipment is not 'within the scope of the applicable schedule agreement' and thus not covered by Article 36."

A careful review of the record in the instant case does not persuade the Board that it should depart from its determination in the above-cited case.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of January 1996.