

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31513
Docket No. MW-30363
96-3-92-3-75

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

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

- (1) The agreement was violated when the Carrier assigned outside forces (Fairmont Railway Motors) to perform System Track Welding Subdepartment work (switch grinding) on the Tucson Division in the San Simon, Arizona area beginning October 16, 1990 and continuing (Carrier's File MofW 152-1149 SPW).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance notice of its intention to contract out said work as required by Article IV of the May 17, 1968 National Agreement.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the Claimants* listed below shall each be paid "... (12) hours per day at the Grinders Operator's rate of pay sixty (60) days retroactive from the date on this claim and all subsequent days until this violation is rectified"

| | | |
|---|------------------|-----------------|
| * | L. L. Hernandez | W. C. Russell |
| | M. F. Villanueva | R. R. Gonzales |
| | T. L. Morales | F. J. Morga |
| | R. Vigil | D. J. Benedetto |
| | R. G. Ceja | W. Skeet |
| | D. R. Duncan | J. R. Morga |
| | J. H. Flanagan | C. C. Sanchez |
| | H. F. Hernandez | E. R. Espinoza" |

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 were given due notice of hearing thereon.

Without prior notice to the Organization, the Carrier contracted with Fairmont Railway Motors to perform switch grinding work.

Initially, we reject the Carrier's argument that it was not obligated to give notice to the Organization because the work in dispute was not exclusively performed by the employees represented by the Organization. See Third Division Award 30180 between the parties ("The Board concurs with the Organization that it need not meet an 'exclusivity' test to advance its Claim to rail grinding work.").

The record developed on the property shows the following offered by the Carrier:

"Approximately 30 years ago, this Carrier began using outside forces to perform rail grinding. The work was performed by Sperry Corporation and later by Speno Rail Services, Inc. ...

The Southern Pacific Transportation Company purchased two 40-stone rail grinders from Fairmont Railway Motors in the early 1980's to be used primarily to grind curves. Prior to obtaining these grinders, all rail grinding was performed by outside forces. ...

Recent tests have shown that the life of tangent rail can be prolonged with a consistent maintenance-based program of rail grinding. In order for this Carrier to implement such a program, it was necessary to obtain additional grinding capacity. Starting in 1989 we began using Loram Maintenance of Way, Inc. to perform additional rail grinding on both Western and Eastern Lines. The grinding stones on the ... equipment are hydraulically adjusted and computer controlled. This type of equipment is not owned by any railroad in the United States. The rail grinding being performed ... could not be done by Carrier forces using our Fairmont equipment, as the magnitude of the program far exceed the capacity of our equipment.

The Carrier has contracted out this work systemwide in the past without any objections from the Organization."

Third Division Award 30180 addressed a contracting without notice claim involving rail grinding work. The claim was denied on the following bases:

"... [T]he 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."

While the type of grinding in Award 30180 might be technically different than in this case (this case involves the grinding of switches whereas the work in Award 30180 involved rail grinding), based on the facts before us, the conclusion is the same. Grinding work has been contracted out for years and the equipment used by the contractor "provides service not obtainable from the Carrier's own equipment."

The Organization's arguments to the contrary are not factually supported in this record. While the Carrier owns grinding equipment, the Carrier does not own the type of grinding equipment necessary to perform the switch grinding work at issue in this case. We also take particular note that the Organization has not factually supported any assertion that the type of equipment involved in this dispute could have been leased.

Based on the above and considering Award 30180, we shall therefore deny the claim.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 20th day of June 1996