

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31602
Docket No. MW-30821
96-3-92-3-653

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

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Louisiana & Arkansas Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Lewis Rail) to build prefab switch and rail panels with Carrier owned material at Mile Post T-41.9 on December 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20 and 21, 1990 [Carrier's File 013.31-320(452)].
- (2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it failed to furnish the General Chairman with advance written notice of its intention to contract out said work.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Section Foreman Roy Norwood, Welder Helper D. A. Daily and Laborers C. W. Archield and E. L. Black shall each be allowed pay at their respective rates of pay for an equal proportionate share of the total number of man-hours expended by the outside forces."

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.

Commencing early December, 1990, Carrier contracted with Lewis Rail to build prefab switch and rail panels in the vicinity of Baldwin, Texas. On January 14, 1991, the Organization submitted a claim alleging Carrier had violated Rules 1 and 2 of the current Agreement between the Parties, Addendum No. 9 Article IV-1968 Contracting Out, and the December, 1981 National Mediation Agreement when it hired Lewis Rail to perform duties "traditionally and historically" performed by members of the Organization.

Carrier denied the claim, stating:

"Contrary to your allegations, KCS does not own, nor as you put it, 'support' Lewis Rail-KCS does, however, purchase prefabricated switch panels and continuous welded rail from Lewis Rail, as do other railroads. Because the Carrier had chosen to purchase quarter mile long strands of welded rail from Lewis Rail Service and Lewis Rail knew that the Carrier's rail rehabilitation program was a long term project, they chose to purchase land adjacent to the Louisiana & Arkansas Railroad at Baldwin, Texas; a relatively centralized location for shipping rail throughout the Carrier's property.

Also, in your letter, you allege that the Carrier is providing its own materials to Lewis Rail is pure conjecture unsupported by facts. KCS does not supply its materials to Lewis Rail; Lewis Rail purchases necessary materials from various vendors; produces a product, and sells it to Carrier who has issued a purchase order for the product."

Carrier further noted that each of the Claimants, with the exception of Mr. Daily, who was on vacation, were fully employed throughout the claim period.

A review of the evidence of record supports Carrier's contention that it purchased the prefabricated track, switch and rail panels as completed units from Lewis Rail. In this case, Carrier's purchase of a completed "off the shelf" product moots any question of the applicability of Article IV, Contracting Out and related provisions cited in the claim. Based upon the foregoing, this claim is denied.

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 29th day of August 1996.