

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31716
Docket No. MW-31378
96-3-93-3-251**

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

(Brotherhood of Maintenance of Way Employes

PARTIES TO DISPUTE: (

(Denver and Rio Grande Western Railroad Company

STATEMENT OF CLAIM:

- “(1) The Agreement was violated when the Carrier assigned outside forces (Luco Salt Lake Steel) ‘...picked up rail, spikes and plates at different locations (Grand Junction west yard - 160 rail -- Delta - 60 rail -- Austen 50 rail -- also misc. spikes, plates and rail throughout the Montrose branch. ***’ beginning November 12, 1991 and continuing (System File D-92-02).

- (2) The Agreement was further violated when the Carrier failed to give the General Chairman fifteen (15) days’ advance written notice of its intent to contract out the work in Part (1) above 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, machine Operator L. T. Bartlett and employes assigned to the Grand Junction Section, the Delta Section and the Peonia Section subsequent to November 12, 1991 shall each be allowed eight (8) hours’ pay per day at their respective straight time rates and that they shall be compensated at their time and one-half rates for hours worked outside the regular assigned hours commencing November 12, 1991 and continuing until the violation cease.”

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.

From the Statement of Claim, it is the Organization's position that Carrier violated various Rules and Agreements by contracting work that is theirs by Agreement and did so without advance notice.

The Carrier responds stating no Rules and/or Agreements were violated, particularly the Contracting Out Agreement, as it contracted no work. It did sell "as is, where is" scrap material with the purchaser coming on the property to retrieve that which it bought.

The Carrier, in its response to the claim presented at the first level, stated:

"...Should you wish we can make available the pertinent sales documents for your inspection...."

Before this Board, the Organization argues that the Carrier never substantiated its defense. The Board finds, however, that the Organization failed to avail itself of the opportunity to review the documents they are now contending are improperly before this Board as part of Exhibit A of the Carrier's Submission.

A like situation prevailed in a dispute resolved by the Board in Third Division Award 30901. Following is an excerpt from that Award:

"...the Carrier advise the Organization that '...a copy of the contract...is available in our offices for your inspection, should you so desire.' Under the circumstances, the Organization cannot argue that the Carrier did not produce a copy of the contract on the property...."

This is a sale of scrap material on an "as is where is" basis. The Contracting Rules are not applicable to this situation, nor is there any evidence that the scrap merchant made any judgment as to what was salvageable and what was not.

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 25th day of September 1996.