

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32021
Docket No. MW-31511
97-3-93-3-521**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Denver and Rio Grande Western Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Holland Company) to perform work customarily and historically assigned and performed by a welding foreman, crane operator, trackmen and welders beginning April 6, 1992 and continuing (System File D-92-21B/MW 22-92).**
- (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, Welding Foreman J. Whiteford, Work Equipment Operators B. Murray, M. McQuitty, all trackmen assigned to the Pueblo Section and all welders assigned to the Pueblo area during the period involved here shall be compensated at their respective rates of pay for an equal proportionate share of the total number of straight time and overtime man-hours expended by the outside forces beginning April 6, 1992 and continuing until the violation ceases.”**

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.

In this dispute, the Organization alleges the Carrier contracted out the work of welding rail sections into ribbon rail in violation of the Agreement. According to the claim, the work was performed by the Holland Company at a rail welding plant established in Carrier's Minneque Yard. The Organization cited Third Division Award 28475 and other decisions in support of its position.

Carrier, in contrast, denied any improper contracting of work. According to its denial, all welding at the Minneque plant was discontinued in October 1990, some 18 months prior to the claim dates. No welding was thereafter performed on Carrier's rail either on or off its property except for field welds by its forces. Rather, finished ribbon rail was purchased from an outside supplier, Pueblo Rail Services, a subsidiary of CF&I Steel Corporation. The welding work on this rail was performed at CF&I's location, a plant formerly owned by the Burlington Northern Railroad Company. Carrier did not take possession of the purchased rail until after it was loaded and moved by train onto its property. In addition, Carrier acknowledged that it did perform some inspection of the welding work CF&I's premises.

The on-property record in this matter is far from clear. In the correspondence, the Organization continued to maintain that Holland Company was involved in the welding. It is not clear, however, whether the Organization believed the work was performed by Holland at the Minneque Yard plant or that Holland somehow did the work at the CF&I plant. In either circumstance, the record provides not evidence of privity of contract between Carrier and Holland Company. Other Organization correspondence also appears to concede that the Carrier closed the Minneque Yard plant on October 1, 1990.

The basis for the Organization's reliance on Third Division Award 28475 is also not clear. That decision, between these same parties, turned on the Carrier's refusal to provide a copy of the alleged lease of the Minneque plant to the Holland Company. There

was no such refusal involved in this dispute. Moreover, the on-property record does not reveal that the Organization ever directly challenged Carrier's contention that it purchased finished rail from CF&I. Nor does the record show that the Organization requested to review supporting purchase orders and was refused access to such records.

Many prior awards of this Board have recognized that the purchase of finished goods from third-party suppliers does not constitute contracting of work. As a result, such business activity does not trigger the advance written notice requirements of Article IV of the May 17, 1968 National Agreement. See, for examples, Third Division Awards 28561, 29108, 31160, 31602 and 31314.

On the whole, the Board finds the on-property record to be unsuitable, from the standpoint of both clarity as well as burden of proof, to warrant a sustaining award. The claim, therefore, must be 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 6th day of May 1997.