

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32626
Docket No. MW-31252
98-3-93-3-220**

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Kansas City Southern Railway Company (former
(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 an outside contractor (A. K. Gillis) to unload crossing track panels at road crossings at Mile Posts T-120, T-118.5 and T-98.4 on October 8, 1991 [Carrier’s File 013.31-320(501)].**
- (2) The Agreement was further violated when the Carrier assigned an outside contractor (Harold Luckett who was subcontracted by A. K. Gillis) to unload crossing track panels at the road crossing north of Winnsboro, Texas on October 21, 1991 [Carrier’s File 013.31-320(502)].**
- (3) The Agreement was again violated when the Carrier assigned an outside contractor (A. K. Gillis) to unload rubber crossing panels at Mile Post T-130, Highway 11, north of Winnsboro, Texas on October 21, 1991 [Carrier’s File 013.31-320(503)].**
- (4) 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.**
- (5) As a consequence of the violations referred to in Parts (1) and/or (4) above, Section Foreman R. Oney and Laborers M. D. Bradshaw,**

W. B. Linwood and A. J. Ray shall each be allowed pay at their respective straight time rates for an equal proportionate share of the six (6) man-hours expended by the outside forces.

- (6) As a consequence of the violations referred to in Parts (2) and/or (4) above, Section Foreman R. Oney shall be allowed five (5) hours' pay at his straight time rate for the total number of man-hours expended by the outside forces.
- (7) As a consequence of the violations referred to in Parts (3) and/or (4) above, Section Foreman R. Oney and Laborers M. D. Bradshaw, W. B. Linwood and A. J. Ray shall each be allowed pay at their respective straight time rates for an equal proportionate share of the ten (10) 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 were given due notice of hearing thereon.

In the three claims involved in this Docket, the Organization contends that the Agreement was violated when Carrier utilized employees of a contractor to unload company material at several locations. It is not alleged that any other work was performed at the site of the claims, only that the unloading of company track material was performed by a contractor's employees. The items unloaded were track material used in crossing repair-maintenance. The Organization also contends that intent to sub-contract notice requirements of Article IV of the May 17, 1968 National Agreement were not followed in these instances.

Carrier responds that the Organization does not hold exclusive right to the work of unloading company track material, and that it was not necessary to follow the notice requirements of Article IV, when a contractor delivered crossing track panels and rubber crossing panels to the job site on the days involved in the three claims before the Board.

The precise issue involved in these claims is not new to the Board. The issue of using a contractor to deliver track material to the work site was visited in Third Division Award 29252. In that Award, involving the same parties involved here, the claim of the Organization was denied. There the Board noted:

“At issue in this case is whether or not the Agreement, particularly Article IV of the May 17, 1968, National Agreement, was violated when Carrier utilized the services of a contractor to unload company material. Unloading of company material, even if the company material is to be subsequently used in maintenance of way track, bridge and/or structure work, is not a task over which maintenance of way forces are entitled to make any claim. All classes of carrier employees, over the years engaged in the work of unloading and receipt of company material for their own work and that of other classes. Additionally vendors and contractors when appropriate have unloaded company material upon its receipt.”

There is nothing in the record to indicate to the Board that the conclusions reached in Award 29252 is in error. In the circumstances that exist here the conclusions reached in Award 29252 are appropriate as all that seems to be involved is that a contractor delivered company material to a work site. Absent a showing that other work was performed by the contractor, it was not necessary to give an Article IV notice.

The claims will 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 23rd day of June 1998.