

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35083
Docket No. MW-31065
00-3-93-3-11**

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Delaware and Hudson 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 (Cole’s Truck Parts) to perform Maintenance of Way welding work on a trailer at Davenport, New York on or about July 31, 1991 (Claim No. 64.91).**
- (2) As a consequence of the violation referred to in Part (1) above, Welder Stuart Hurlburt shall be allowed thirty-two (32) hours’ pay at the welder’s straight time rate of pay for the time spent by the outside forces performing said work.”**

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.

This case involves a claim by the Organization that the Carrier violated the Agreement when it assigned an outside contractor to perform welding work that allegedly is reserved to the Carrier's employees and is customarily and historically performed by its forces. The Organization asserts that the contracting out of welding work violates the Agreement even though the work has not been exclusively performed by Maintenance of Way employees. According to the Organization, the Carrier may not invoke a shortage of equipment or a lack of expertise to justify contracting out Scope-covered work.

In addition, according to the Organization, the Carrier violated Rules 1.4 and 1.5 of the Agreement by failing to give the General Chairman 15 days advance written notice of the contracting transaction. It asserts that this omission denied the Organization the opportunity to attempt to persuade the Carrier not to contract out the work.

The Organization argues that the appropriate remedy is a monetary one, even though the Claimant was working a regular assignment at the time the work was performed. Thus, the Organization seeks 32 hours' pay at the straight time rate on the Claimant's behalf to cover the time spent by outside forces performing the disputed work.

The Carrier, on the other hand, asserts that its decision to contract out the welding work did not violate the Agreement. According to the Carrier, the Organization may not prevail on its Scope Rule claim absent evidence of exclusivity. The Carrier maintains that its Work Equipment Shop has never made repairs such as those involved here to the fifth wheel pin of a trailer.

Further, the Carrier states that it properly determined that the work required special gauges and expertise for proper alignment, and that its proper performance presented a bona fide safety concern. The Carrier argues that it fairly determined that the repair should be performed by a New York State Certified Welder in order to ensure that the work would be done properly and safely, and in order to reduce its liability exposure should anything go wrong with the installation. The Carrier submits that any other welding that was performed in connection with the replacement of lights on the rear of the trailer was incidental and did not violate the Agreement.

After carefully reviewing the record evidence, we have determined that the Organization's claim must be denied. Our basis for denying the claim is that the Carrier fairly and properly determined that the disputed welding work should be performed by a Certified New York State Welder. Its safety concerns were legitimate. Moreover, the record demonstrates that the employees of the outside concern that performed the welding had the necessary equipment and held state certification. The record likewise shows that the Carrier's employees did not have the tools or expertise to perform the work. The facts of this case do not support the Organization's argument that the Carrier was obligated to have provided training that would have permitted its own employees to do the work.

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 15th day of November, 2000.