

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 35

Case No. 34

Referee Fred Blackwell

Carrier Member: R. O'Neill

Labor Member: W. E. LaRue

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim of the Brotherhood (CR-1548) that:

- (a) The Carrier violated the Agreement when it assigned outside forces to fabricate eight (8) rail clamp repair kit assemblies.
- (b) The Carrier also violated the Agreement when it did not give the General Chairman advance written notice of its intention to contract out said work.
- (c) As a consequence of the aforesaid violations, Repairman A. G. Edgell shall be allowed two thousand, one hundred dollars (\$2,100).

FINDINGS:

Upon the whole record and all the evidence, after September 23, 1988 hearing in Washington, D. C., the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

OPINION

This is a Scope Claim arising at Canton, Ohio, on the basis of allegations that the Carrier violated the Scope Rule of the controlling Agreement when, in February 1985, the Carrier con-

tracted with an outsider, the United Grinding Company of Canton, Ohio, for the fabrication of eight (8) rail clamp repair kit assemblies.

The Carrier contends that the work in dispute involved a permissible purchase of parts from an outside vendor, and that the manufacture of such parts is work which is not covered by the Scope Rule of the parties' Agreement.

The record reflects that because of a weak section of the frame of the Nordberg Super B rail gang spikers, the Carrier's Maintenance of Way Shop at Canton, Ohio, made repetitive repairs to the spiker, because, since the weak section bent during operation, repairing the section to the original design and strength of the weak section, set the stage for the frame to be bent again when the spiker was returned to operation. In order to improve on this unsatisfactory maintenance situation, a Canton Shop Repairman made a repair kit which reduced the time of the normal repair to the frame of the rail gang spiker and resulted in a better quality overall repair. The first rail clamp repair kit was made as a prototype and thereafter, two additional kits were made for use in repairing Nordberg spiker machines.

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After due study of the whole record, inclusive of the submissions presented by the parties in support of their respective positions in the case, the Board concludes and finds that the record at hand does not establish that the disputed work is cover-

ed by the scope of the confronting agreement.

While there is no doubt that three (3) of the Rail Clamp Repair Kit Assemblies were made by Maintenance of Way forces in the Carrier's Maintenance of Way Shop, Canton, Ohio, there is also no doubt that principal purpose of the Carrier's Canton Shop is to repair equipment, and not to manufacture parts. The need for specialized parts in repairing specific pieces of machinery will arise in regular course in a repair shop of this kind and the production of prototypes of such parts at the Canton Shop does not change the shop to a manufacturing facility. Nor does the production of such prototypes affect the Carrier's right to purchase successors to the prototypes from outside vendors. For a like finding see this Board's Opinion in Award No. 8, Case No. 8 (February 12, 1986) which denied a similar complaint from this same facility (the Canton Maintenance of Way Shop) concerning the Carrier's use of an outside firm to fabricate "bearing mount plates for the broom box of the Plasser ballast regulator". In that Award this Board commented as follows:

"...the Board observes that a work assignment involving the making of a prototype or model of a part that is needed for repair and/or overhaul of machinery or equipment, does not in and of itself entitle the craft of the Employee performing the assignment, the right to make the successor(s) of the prototype; the fact that the Carrier has the tools and equipment and the craft has the ability to manufacture the successor does not alter this conclusion. In sum, the record evidence makes no showing that

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the function of the Carrier's Repair Shop is to manufacture parts of the type involved in this dispute and accordingly, the Carrier decision to have an outside vendor manufacture the parts in question is not violative of the Agreement."

In view of the record as a whole, and in light of the denial of a similar claim at the Canton Shop in this Board's Award No. 8, the claim will be denied.

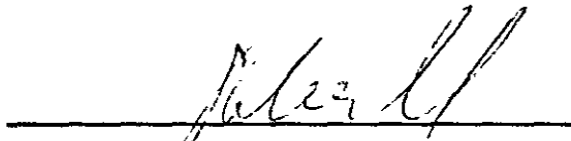
AWARD:

Claim denied.

BY ORDER OF PUBLIC LAW BOARD NO. 3781.



Fred Blackwell, Neutral Member



R. O'Neill, Carrier Member



W. E. LaRue, Labor Member

Executed on July 10, 1989

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