



Award No. 19155  
Docket No. MW-19221

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Paul C. Dugan, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
THE TEXAS AND PACIFIC RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when, without prior notice to the General Chairman as required by Article IV of the May 17, 1968 National Agreement, it assigned the work of plowing ballast on the Alexandria Division to outside forces on Sunday, July 27, 1969. (System File K-247-4777)

(2) Machine Operator W. R. Delacerda be allowed pay at his time and one-half rate for a number of man hours equal to that expended by outside forces in the performance of the work referred to within Part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** Claimant W. R. Delacerda is a regularly assigned machine operator with a work week extending from Monday through Friday with Saturdays and Sundays designated as rest days.

On Sunday, July 27, 1969, the Carrier assigned the work of plowing balast long the right-of-way from Mile Post 115 to Mile Post 118 to Contractor Raymond Blanks. The outside forces, who have no seniority whatsoever under the scope of this Agreement, utilized a motor grader similar to the Carrier's Motor Grader MG-4 in the performance of this work. It has not been disputed that work of this character is encompassed within the scope of the Agreement and that it was assigned to outside forces without prior notice to the General Chairman as required by Article IV of the May 17, 1968 National Agreement which reads:

"In the event a carrier plans to contract out work within the scope of the applicable schedule agreement, the carrier shall notify the General Chairman of the organization involved in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than 15 days prior thereto.

If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the carrier shall promptly meet with him for that purpose. Said carrier and organization representatives shall make a good faith attempt to reach an understanding con-

6. In handling the dispute on the property, the Organization assumed the most essential element of their claim, which was — to show the disputed work was included in the Scope of the applicable agreement — and simply contended the Carrier had the proper equipment and personnel to operate the equipment; and that under the rule of the MofW Agreement the Carrier was required to use the roadway machine operator to perform the disputed work. However, the only rule cited was Rule 2, Seniority Rights.

In declining the claim, it was pointed out that the work was not covered by the Scope or any other rule of the agreement, but had been contracted to outsiders historically, as evidenced by a long established practice. In any event, the only off-track motor grader owned by the Carrier was in use at Weatherford, Texas, some 447 miles from the point where the alleged violation occurred.

**OPINION OF BOARD:** It is undisputed that Carrier failed to give the Organization 15 days' written advance notice prior to contracting out the work of plowing ballast on Carrier's right-of-way from Mile Post 15 to Mile Post 118 to an outside contractor.

This issue was decided adversely to Carrier in Award 19153, and for the reasons stated therein, we find that Carrier did violate Article IV of the May 17, 1968 National Agreement in this instance when it failed to give said 15 days' advance written notice to the Organization prior to contracting out the work in dispute.

The Carrier never contended that this was not scope covered work during the handling of dispute on the property. The Carrier's contention in this respect represents a new issue which was never raised on the property and, therefore, it cannot properly be raised now.

In regard to damages, since the Claimant was off duty and not working on the date of the work in dispute, he is entitled to the number of man hours equal to that expended by the outside contractor in the performance of the work in dispute at his time and one-half rate of pay.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That the Agreement was violated in accordance with Opinion.

#### AWARD

Part (1) of the Statement of Claim is sustained.

Part (2) of the Statement of Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: E. A. Killeen  
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April 1972.

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