NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25677

THIRD DIVISION

Docket Number MW-25679

George S. Roukis, Referee

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

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

(1) The Carrier violated the Agreement when it assigned excavation work in connection with a grade widening project at Glenwood Canyon beginning July 6, 1982 to outside forces (System File D-33-82/MW-1-83).

(2) Because of the aforesaid violation, Work Equipment Operators D. Drake, L. Moore, L. Bartlett, J. Matlock and L. Ebaugh shall each be allowed pay at their respective rates for an equal proportionate share of the total number of man-hours expended by outside forces beginning July 6, 1982.

OPINION OF BOARD: The essential facts in this dispute are set forth as follows:

Beginning on July 6, 1982, Carrier assigned outside forces to perform excavation work in connection with a grade widening project at Glenwood canyon between Allen and Shoshone sidings. It is the Organization's position that work of this character has been traditionally performed by Maintenance of Way and Structures Department employes using Carrier owned equipment and said work is reserved to these forces. Specifically, it asserts that Carrier violated Rules 1, 2, 3 and 4 of the Controlling Agreement, and particularly, Article IV of the May 17, 1968 National Agreement, and the Letter of Agreement, dated December 11, 1981. Article IV - Contracting Out, which is pertinent herein, reads:

"Article IV - Contracting Out

"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 representative shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached the carrier may nevertheless proceed with said contracting, and the organization may file and progress claims in connection therewith.

"Nothing in this Article IV shall affect the existing rights of either party in connection with contracting out. Its purpose is to require the carrier to give advance notice and, if requested, to meet with the General Chairman or his representative to discuss and if possible reach an understanding in connection therewith.

"Existing rules with respect to contracting out on individual properties may be retained in their entirety in lieu of this rule by an organization giving written notice to the carrier involved at any time within 90 days after the date of this agreement."

A pertinent portion of the December 11, 1981 Letter of Agreement states:

'The parties jointly reaffirm the intent of Article IV of the May 17, 1968 Agreement that advance notice requirements be strictly adhered to and encourage the parties locally to take advantage of the good faith discussions provided for to reconcile any differences. In the interest of improving communications between the parties on subcontracting, the advance notices shall identify the work to be contracted and the reasons therefor."

The Organization avers that while Carrier notified the General Chairman of its (Carrier's) intent to contract out work by letter, dated April 27, 1982, the written notice did not comply with either the letter or spirit of Article IV. In effect, it contends the notice did not identify the specific location of the work, the type of equipment needed, the work's commencement date or the reasons for contracting out the work.

Carrier argues that it complied with Article IV since it notified the General Chairman of its intention to contract out the disputed work by letter, dated April 27, 1982, and moreover, it supplied the General Chairman at a mutually scheduled conference with the particulars on each of the ten (10) locations mentioned in the April 27, 1982 notice. It maintains that the General Chairman was fully apprised of the prospective work details and the operational reasons for contracting out the work. It further contends that the claim appealed to the Division was procedurally defective since the wording differed from the claim initially presented on the property, and requests that it be peremptorily dismissed.

On substantive grounds, it asserts that the Organization has never proven that the work of constructing and preparing grades is exclusively reserved to the Maintenance of Way Department and observes that it does not have the necessary equipment to construct new grades of major magnitude. It avers that time is of the essence on these types of projects and it needed its own forces to perform regular maintenance duties.

In our review of this case, we concur with the Organization's position. Firstly, as to the procedural questions raised by the Carrier, we find nothing in the record of the claim handling that would indicate a violation of the timeliness requirements, not a correlative finding that the claim was materially changed so as to constitute a new substantive grievance. Its wording did not prejudice Carrier's ability to respond to the asserted violation nor effectively present it with a new dispute.

Secondly, we agree with the Organization that Carrier failed to comply with the explicit requirements of Article IV since the notice of April 27, 1982 was vague and inconsistent with the specific requirements of the December 11, 1981 Letter of Agreement. In effect, the advance notice was tantamount to a general blanket notice and not the type of notice contemplated by the Agreement.

In Third Division Award Nos. 25141 and 25103 involving the same basic issue, we upheld the Organization's position on the rationale that a blanket notice fell short of meeting the relevant notice requirements. In the case herein, the April 27, 1982 advanced notice was not fully developed, and as such, was not consistent with the manifest intent and requirements of Article IV of the May 17, 1968 National Agreement and the December 11, 1981 Letter of Agreement. In view of this violation and in accordance with our prior rulings we will sustain the claim as follows:

"Claim for each named claimant is sustained for wage loss suffered, i.e., the named claimant's proportionate share of time when added to his straight-time compensable time for period involved shall be limited so as not to exceed the total of his normal compensable time."

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

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

## AWARD

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1985.