

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Duluth, Missabe and Iron Range Railway Company

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

(1) The Carrier violated the Agreement when it assigned outside forces to haul debris in connection with a roof repair project at the Proctor Round House on July 12 and August 21 and 22, 1984.

(2) 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.

(3) As a consequence of the aforesaid violations, B&B Truck Drivers J. Keye and D. Lonke shall each be allowed eleven (11) hours of pay at their respective rates."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

After the members of the craft repaired a roof on one of the Carrier's buildings at Proctor, Minnesota the Carrier contracted to have the debris hauled away to a disposal site. It is the position of the Organization that the disposal work belonged to the members of the craft, first of all, and secondly that the Carrier had neglected to give notice to the Organization when it used a contractor.

At issue here is alleged violation by the Carrier of various Rules of the Agreement, as well as Supplement 3. These provisions read, in pertinent part, as follows:

"RULE 1

Scope

The rules contained herein supersede all previous rules and agreements and shall govern the hours of service, rates of pay, and working conditions of all employees in any and all subdepartments of the Maintenance of Way and Structures Department."

"RULE 2

Seniority

(a) Except as otherwise provided in these rules, seniority starts at the time the employee last entered the continuous service of the Company in any group in any subdepartment.

(b) Rights accruing to employees under their seniority entitle them to consideration for positions in accordance with their relative length of service with the Company as herein-after provided.

(c) Seniority rights of all employees are limited to the subdepartment in which employed. Subdepartments and groups are listed as follows:

* * *

II--Bridge and Building Subdepartment

Group (A) - Classification

1. Foremen.
2. Assistant Foreman.
3. Mechanics (including Cabinetmakers, Carpenters, Composite Mechanics, Fire Inspectors and Welders, Fuel and Water Supply Repairmen, Masons, Ore Dock Repairmen, Scale Inspectors, Painters, Plasterers, Plumbers and Semi Truck Driver).

4. Truck Drivers.
5. Helpers.
6. Pumpers."

"RULE 26

Classification of Work

* * *

(c) An employee assigned to construction, repair, maintenance or dismantling of buildings, bridges or other structures, including the building of concrete forms, erecting falsework, setting of columns, beams, girders, trusses, or in the general structural erection, replacement, maintaining, or dismantling of steel in bridges, buildings or other structures and in the performance of related bridge and building iron work, such as riveting, rivet heating, or who is assigned to miscellaneous mechanics' work, shall be classified as a bridge and building Carpenter and/or Repairman.

* * *

(j) Other classes of employees not here set out shall perform the work heretofore regularly performed by them."

"Supplement 3

(a) The Railway Company will make every reasonable effort to perform all maintenance work in the Maintenance of Way and Structures Department with its own forces.

(b) Consistent with the skills available in the Bridge and Building Department and the equipment owned by the Company, the Railway Company will make every reasonable effort to hold to a minimum the amount of new construction work contracted.

(c) Except in emergency cases where the need for prompt action precludes following such procedure, whenever work is to be contracted, the Carrier shall so notify the General Chairman in writing, describe the work to be contracted, state the reason or reasons therefor, and afford the General Chairman the opportunity of discussing the matter in conference with Carrier representatives. In emergency cases, the Carrier will attempt to reach an understanding with the General Chairman in conference, by telephone if necessary, and in each case confirm such conference in writing."

First the issue of Scope. It is the contention of the Organization that the work in question fell under its exclusive purview. In its denial of the Claim the Carrier states that it did not have a "...12-yard or 16-yard dump truck ..." to do the work in question because such a piece of equipment is not "... required (in the Carrier's) normal operations." In disputing this reason for denying the Claim the General Chairman does not argue about ownership of such equipment but he does make a persuasive argument, in the estimation of the Board, about whether such equipment was needed in the first place to dispose of the materials in question. The General Chairman then goes on to enumerate in detail how dump trucks of lower tonnage had been used in the past to do a variety of work on this property, and how such could have served the purpose in this instance also. The Board finds such reasoning, backed up with sufficient detail, convincing. Secondly, however, the Carrier argues that "... (h)istory shows that garbage removal had been contracted for years, without notice to any craft, and without objection from any craft." It is unclear from the record if such debris included or excluded roofing, but the Board deems that immaterial. It must agree with the logic of the Carrier when it states, reminiscent of the school of thought started by Gertrude Stein, that "trash is trash." ^{1/} The Organization does not dispute, by means of evidence, that trash removal from the property had not been, in the past, a mixed activity: some was done by B&B Forces, and some by contractors. At one point in the handling of this Claim on property the Organization explicitly acknowledges such to be the case.

The issue of notice of contracting is the last troubling issue in this case. It is clear that Supplement 3 requires advance notice of contracting to be given to the General Chairman by the Carrier. The Board has already concluded, in a Claim accompanying this one, Third Division Award 28411, that Supplement 3 requires advance notice of contracting whether the work in question historically belongs to the craft or not.

^{1/} Stein's famous axiom, in this respect, is that "...a rose is a rose is a rose...."

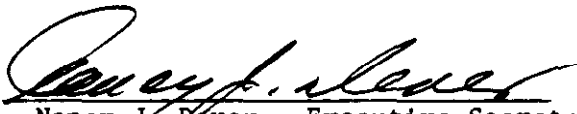
The Organization states that "... (c)ontracting of this nature by the Carrier has been done in the past (thus underlying the mixed nature of practice) but with proper notification to this Brotherhood...." As noted above, however, the Carrier argues that garbage removal had been done for years without notice to this, or "any craft." Evidence suggests that implementation of the notice requirements of Supplement 3 have been sporadic and that the Organization has not policed this contractual provision, at all times, with the same degree of assiduousness that it is exercising in this and other Claims now before this Board involving subcontracting disputes between these same parties. In view of this, relief granted by the Board here will be the same as that granted in Award 28411, and reasoning and conclusions on this issue put forth by the Board in that Award are incorporated herein by reference.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

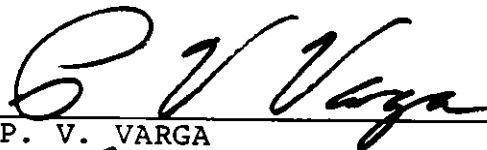

Nancy J. Bever - Executive Secretary

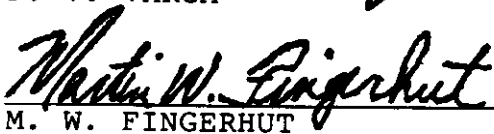
Dated at Chicago, Illinois, this 25th day of May 1990.

CARRIER MEMBERS' DISSENT
TO
AWARD 28412, DOCKET MW-26797
(Referee Suntrup)

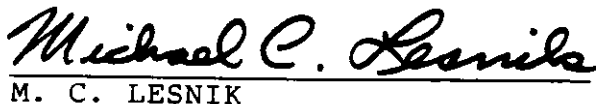
The Majority has correctly found in this case that simply hauling trash is NOT work reserved to the Maintenance of Way and Structures Department. In fact, the evidence of record substantiated that trash hauling had been performed by contract on this property since 1964. On such a record it is an unwarranted expansion of Supplement No. 3(c) to conclude that notice is necessary, "whether the work in question historically belongs to the craft or not."

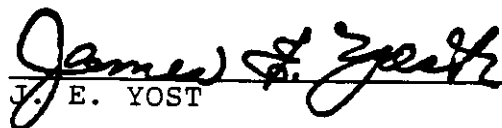
We Dissent.


P. V. VARGA


M. W. FINGERHUT


R. L. HICKS


M. C. LESNIK


J. E. YOST