

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Union Pacific Railroad Company (Former Missouri Pacific Railroad Company)

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

(1) The Agreement was violated when the Carrier assigned outside forces (Herzog Construction Company) to perform routine track work (installing ties, replacing bolts, raising joints, surfacing track, etc.) in the East Bowl at Neff Yard in the Kansas City Terminal beginning April 2, 1986 (Carrier's File 247-7447 MPR).

(2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it did not give the General Chairman advance written notice of its intention to contract said work.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the employees\* listed below shall each be allowed pay at their respective rates for forty (40) hours each week beginning April 2, 1986 and continuing until the violation listed in Part (1) above is corrected.

\*Murphy R.  
Scott C. E.  
Rust M. A.  
Thomas W. M.  
Thomas A. M.  
Nance J. R.  
Olds D. R.  
Stroud J.  
King D. G.  
Kreiger W. O. Jr.  
Scott W. C.  
Armenta F. B.  
Swopes N. Jr.  
Meza J. N.  
Perez E. D.  
Withers C. Jr.  
Rogers E. G.  
Bacon G. L.  
Dishman A.  
Taylor G.  
Horn J.  
Andrews T. L.

Randolph R.  
Schaeffer J. P.  
Crumton T.  
Rust K. W.  
Murphy F. M.  
White F.  
Curtis W. A.  
Kirby R. T.  
Howard M. J.  
Moreno J. I.  
Bacon J. H.  
Owens L. E.  
Braziel C.  
Arredondo G.  
Parker W.  
Chatmon W. J.  
Parker S. A.  
Giles F. T.  
King D. G.  
Harden S.  
Henshaw R. D.  
Davenport R. A.

Strkyer J. D.  
Smith W. C.  
Cunningham M. Jr.  
Elias R. H.  
Butler A. B.  
Everette J. E.  
Andrews M. D.  
Kennedy J. K.  
Moshier M. A.  
Lewis C. E.  
Eve W. R.  
Scott K. W.  
Gladbach J. J.  
Bishop W. T.  
Leckner J. A. Jr.  
England R. L.  
Horning S. A.  
Adams M. A.  
Hernandez S.  
Hathaway J. A.  
Mosby K. E.  
Cowden R. S.

Kimble S.  
Martens M. L.  
Brightwell R. L.  
Johnson R. W.  
Egleston D. O.  
Childers R. L.

Mitchell P. W.  
Shaw K. S.  
Paris J. W.  
Park J. W.  
Gordonier G. R.  
Shaeffer J. M."

Thomas W. M.  
Gastinger J. A.  
Kinney M. R.  
Crosier T. D.  
Jackson S. P.

#### 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.

Article IV--Contracting Out of May 17, 1968 National Agreement reads in pertinent part as follows:

"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 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...."

On January 15, 1986, the Carrier wrote to the General Chairman as follows:

"As a matter of information the Carrier, in connection with several major reconstruction projects currently progressing in Kansas City Terminal, is now contemplating the utilization of contractor's forces to retire 134,000 track feet of yard tracks including the retirement of 134 turnouts.

With the tremendous amount of work scheduled to be performed in the Kansas City Terminal, we simply do not have either the equipment or manpower to safely and competently perform all of the work to be performed in the time frame allotted. As you know, work of this nature has customarily been performed at locations throughout the system without protest from your Organization.

Serving of this notice should not, however, be construed as an indication that work of this nature of necessity, is work falling under the scope of your Agreement."

Following a conference, the General Chairman replied on February 11, 1986, as follows:

"This is in reference to your letter of January 15, 1986, File No. 247-7097, serving notice that Carrier intends to contract forces to retire 134,000 track feet of yard tracks including the retirement of 134 turnouts.

As stated to you in conference on January 21, 1986, it is our contention that the work in question belongs to the Maintenance of Way Employees, and we are, therefore, protesting the contracting of said work."

The Carrier initiated the contemplated Kansas City project, and on May 25, 1986 the Organization initiated a Claim on behalf of a large number of employees it represents. The Organization, in its Claim, contended that the contractor "has basically taken over all of the track work in this area. The work ... includes renewing ties, putting in ties, putting in bolts, surfacing track, raising joints, etc." The Organization thus took note of work well beyond that specified in the Carrier's January 15, 1986 letter.

Throughout much of the Claim handling procedure, the Organization referred to work in the "West Bowl of Neff Yard." Later, the Organization referred to the "East Bowl", claiming its earlier reference was a typographical error. As will be developed below, the Board does not find it significant to examine whether this was such an error or, as the Carrier contends, a belated attempt to expand the Claim. Further, it is clear that the Carrier was fully aware of the extent of the contracting work under way at Kansas City and that the Organization was making reference thereto in its Claim.

As in Third Division Award 29019 involving the same parties, the Board does not support the Carrier's view that the Claim must fall based on a failure by the Organization to show that it has performed such work on an exclusive basis. Further, there is little support for the contention that the track work involved must be found not covered by the Scope Rule and the Agreement generally, as the Carrier argues.

The Carrier's January 15, 1986 Notice was confined to retirement of tracks and turnouts. The record shows no notice as to the varieties of track work specified in the claim. The Carrier, having determined that at least some notice was advisable as a matter of "information," did fail to include notice of the full extent of the work. To this extent, the Carrier failed to meet the requirements of Article IV.

The Carrier presented on the property an extensive listing of similar contracted projects presumably undertaken without notice to or objection from the Organization. Nevertheless, as found in Third Division Award 29019, the Carrier is found at fault in failing to provide notice, despite its contentions as to "exclusivity" and the "general" nature of the Scope Rule.

The Board, however, does note that this was a "major renovation project" of a nature not customarily undertaken by Carrier forces. The Carrier is arguably correct that "its forces are not well suited to handle projects of that magnitude." This is beyond the Board's capacity to determine. Thus, it would be inappropriate to provide the remedy of pay for employees who might have been engaged in such work.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois this 28th day of October 1991.