

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 34052
Docket No. MW-32484
00-3-95-3-382

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Soo Line Railroad Company (former Chicago, Milwaukee,
(St. Paul and 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 (Rail Systems, Inc.) to perform track maintenance work (tie handling, sorting and loading of materials into railroad gondola cars) in the vicinity of Mile Posts 117 and 128 on the Watertown Sub between April 4 and November 30, 1994 (System File C-08-94-C080-03/8-00201 CMP).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intention to contract out the work described in Part (1) above, as required by the Scope Rule.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Mr. W. E. Konetzke shall be allowed one thousand one hundred nineteen and one-half (1,119.5) hours' pay at his respective time and one-half rate for the work performed by the outside forces between April 4 and November 30, 1994."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

On May 27, 1994, the Organization submitted a claim on behalf of the Claimant for lost work opportunities when the Carrier allegedly used an outside contractor to perform work the Organization claims has historically and customarily been performed by Maintenance of Way employees.

According to the Organization, between April 4 and November 30, 1994, the Carrier contracted with Rail Systems, Inc. to sort good ties from scrap ties on the Watertown Subdivision between Mile Post 117 and Mile Post 128. The contractor removed the scrap ties and the good ties were retained by the Carrier. This was work historically reserved to Maintenance of Way forces, in the Organization's view. Moreover, the Carrier failed to give the General Chairman notice that it planned to contract out this work.

On the former Chicago, Milwaukee, St. Paul and Pacific Railroad Company territory, Third Division Award 24280 found a distinction between the sale and removal of Carrier property by an outside purchaser and the dismantling and retention of material that would continue to be used by the Carrier. The former was not deemed to be work reserved to Maintenance of Way employees by their Scope Rule while the latter was considered work coming within their Scope Rule.

The Board finds Award 24280 logical and persuasive. Naturally, the Carrier has the right to sell its scrap material to an outside purchaser. However, the dismantling of material that the Carrier retains for future use is work customarily and normally performed by Maintenance of Way employees on the former Milwaukee Road territory.

In accordance with the findings of Award 24280, the claim is remanded to the parties to determine how much of the work performed by Rail Systems, Inc. between April 4 and November 30, 1994, involved the removal and purchase of scrap ties and

how much involved the dismantling of good ties retained by the Carrier for its own use. The latter work should have been assigned to the Claimant and he is entitled to compensation for this lost work opportunity at his straight time rate of pay.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of May, 2000.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 34052

DOCKET NO. MW-32484

NAME OF ORGANIZATION: (Brotherhood of Maintenance of Way Employees

NAME OF CARRIER: (Soo Line Railroad Company (former Chicago,
(Milwaukee, St. Paul and Pacific Railroad Company)

In May 2000, the Board remanded the claim to the parties to determine how much of the work performed by Rail Systems, Inc. between April 4 and November 20, 1994, involved the salvaging of good ties retained by the Carrier for its own use because the Claimant is entitled to compensation for this lost work opportunity at his straight time rate of pay. The parties were unable to reach an agreement regarding how many such ties were retained by the Carrier for its own use. The Carrier contends that 6600 ties were retained. The Organization claims that 26,000 ties were retained.

The Carrier's calculation is based on the Chicago Area Manager of the Engineering Department, who was responsible for the tie dismantling project. The Engineering Department stated that a total of 66,000 ties were removed from the 22 miles of track and that 10% (6,600) of these ties were reusable.

The Organization's calculation was based on the estimate of a Flagman who worked on the Watertown Section flagging for Rail Systems, Inc. during the tie dismantling project. The Flagman claimed that there were "thousands more" than 6,600 ties recovered. He said it was "more like" 26,000 ties.

There is no objective basis for the Flagman's estimate that more like 26,000 ties were recovered. This is conjecture on his part. He never claimed that he actually counted the ties that were removed and recovered by the Carrier for its own use.

The Carrier stated that the Claimant could sort and load 1,500 ties per day. Therefore, it would have taken him five days to sort and load the 6,600 ties that were retained from the project. It made him whole for this lost work opportunity at his straight time rate of pay. That fulfilled the Carrier's obligation. The Claimant is not entitled to any addition remuneration.

Referee Robert M. O'Brien who sat with the Division as a neutral member when Award 34052 was adopted, also participated with the Division in making this Interpretation.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 18th day of July 2007.