

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Davenport, Rock Island and North Western Railway Company

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

(1) The Carrier violated the Agreement when it assigned employes of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company to pick up scrap rail and other track material between Mile Post 169 and Mile Post 179 from August 27 to September 27, 1984 (System File 31-3).

(2) Because of the aforesaid violation, Foreman G. Gladfelter, Truck Driver A. Avila, Machine Operator J. Shepard, Laborers F. Reyes, D. Steffen, M. Hughes, S. Moss, S. Serrano, L. Andreson, V. Goldsberry and R. Wilkins shall each be allowed two hundred seven (207) 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 employees 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.

Claimants hold seniority within the Track and Roadway Equipment Machines subdepartments. From August 27 through September 27, 1984, outside forces picked up scrap material between Mile Post 169 and 179. The Organization thereafter filed a Claim on Claimants' behalf, challenging Carrier's use of outside forces to perform this work.

This Board has reviewed the evidence in this case, and we find that the parties' Scope Rule clearly and unambiguously provides that if the Carrier plans to contract out work that is within the scope of the Agreement, the Carrier must give the Organization's General Chairman advance written notice. The Scope Rule is designed to allow employees an opportunity to persuade the Carrier to assign work to them that the Carrier tentatively plans to contract out. The Carrier was obligated to give the required notice to the General Chairman.

Although there was evidence that on March 22, 1984, the Carrier's General Manager sent a letter to the Organization's General Chairman indicating that in "late spring of 1984," Milwaukee Road forces and equipment would be "sledding and laying welded rail" for the Carrier, there is no evidence that the Carrier gave any notice, in conformance with the Rules, to the Organization that in August and September, 1984, Milwaukee Road forces would be picking up scrap rail and other material. Hence, this Board must find that the Carrier violated the terms of the Scope Agreement by not providing sufficient notice to the Organization.

Once this Board has determined that there was a Rule violation, we next must turn our attention to the nature of the relief sought by the Organization. In this case, the Organization is seeking 207 hours of pay for each of the eleven Claimants. However, the record is clear that the Claimants lost no work as a result of the Rule violation, and there has been no showing that those Claimants incurred any damage. As a matter of fact, the Carrier contends that its alternative to what it did would have been to hire additional forces. Although that seems far-fetched, the Organization has presented no evidence of any loss to the individual Claimants. Hence, the portion of the Claim seeking money damages for the Claimants must be denied.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1988.