

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 37350  
Docket No. MW-36939  
05-3-01-3-584**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn 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 (Reuban Johnson) to perform Maintenance of Way work (operate backhoes to place switch) at BN-Saunders on July 27, 2000 (Claim No. 23-00).
- (2) The Carrier further violated the Agreement when it failed to properly notify and confer with the General Chairman concerning its intent to contract out the above-referenced work as required by Supplement No. 3.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the two (2) senior B-Operators from the Missabe Division shall now each be compensated for four (4) hours' pay at their respective straight time rates of pay.”

**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.

By notice dated March 27, 2000, as part of a large project, the Carrier advised the Organization, in part, that it "... intends to hire contractors to operate specialized equipment for various railroad maintenance work including ... rail grinding, lifting and installing turnouts and track panels ... [because it] does not have the specialized equipment or expertise necessary to accomplish this work."

At a meeting on April 20, 2000, the parties discussed various aspects of the Carrier's intended contracting of work. With respect to lifting and installing turnouts and track panels, the Carrier agreed that it would "... look into the use of a rented backhoe without an operator [and that] ... Maintenance of Way would then operate the backhoes if they are needed." The Organization advised the Carrier that "[i]f a contractor is employed to lift panels or turnouts, a claim will be filed."

The Carrier utilized a contractor on July 27, 2000 who operated a backhoe to aid in the installation of pre-fabricated turnouts at BN-Saunders. This claim followed.

The claim lacks merit.

First, the Organization's assertion that the Carrier's notice was improper as vague is rejected. The March 27, 2000 notice clearly covers "lifting and installing turnouts and track panels" and sufficiently puts the Organization on notice of its intended actions. Further, the parties specifically discussed the issue (which was one of many concerning contracting) in their April 20, 2000 conference.

Second, Supplement No. 3 provides that the Carrier "... will make every reasonable effort to perform all maintenance work in the Maintenance of Way and Structures Department with its own forces." At the April 20, 2000 meeting, the Carrier agreed that it would look into renting a backhoe without an operator. The Carrier then looked into making such a rental and determined that renting the particular backhoe needed for the function in dispute was not appropriate. Specifically, the Carrier determined that it needed a backhoe of much larger size and lifting capacity than the ones it owned and that its Track Operators did not have the day-to-day experience of

operating such large machinery and coordinating with other equipment. The Carrier's backhoes had the capacity to lift 8,000 pound panels, but the particular function required a backhoe capable of lifting 24,000 pound panels. The Carrier's determination was reasonable under the circumstances and it therefore complied with its obligations under Supplement No. 3.

The fact that the Organization disputes the determination made by the Carrier does not change the result. Again, Supplement No. 3 provides that the Carrier "... will make every reasonable effort to perform all maintenance work in the Maintenance of Way and Structures Department with its own forces." Given the heavy lifting demands of the job, we cannot say that the Carrier's evaluation of the equipment requirements and capabilities of the employees were arbitrary determinations and that the Carrier failed to "make every reasonable effort" to use scope covered employees for this particular aspect of a rather large project.

**AWARD**

Claim denied.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 24th day of February 2005.