Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 39708
Docket No. MW-38787
09-3-NRAB-00003-050061
(05-3-61)

The Third Division consisted of the regular members and in addition Referee Jacalyn J. Zimmerman when award was rendered.

(Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company [former Southern
(Pacific Transportation Company (Western Lines)]

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned outside forces (Parker & Son Plumbing Company) to perform Maintenance of Way work (renew gas line and related work) at the Yard Office in El Paso, Texas at Mile Post 1298.0 beginning on October 27, 2003 and continuing through November 24, 2003, instead of Water Service Sub-department employes F. Edgar and H. Moreno (Carrier's File 1388463 SPW).

(2) The Agreement was further violated when the Carrier failed to provide the General Chairman with a proper advance written notice of its intent to contract out the work referenced in Part (1) above or make a good-faith effort to reduce the incidence of subcontracting and increase the use of Maintenance of Way forces in accordance with Article IV of the May 17, 1968 National Agreement and the December 11, 1981 Letter of Understanding.

(3) As a consequence of the violation referred to in Parts (1) and/or (2) above, Claimants F. Edgar and H. Moreno shall now '. . . each be paid their proportionate share, at the respective rate of their

last assigned positions, for the seven hundred thirty-six hours (736) straight time hours worked by the outside contractor and his employes to renew a gas line at the El Paso, Texas yard office described herein. Payment shall be in addition to any compensation they may have already received."

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 August 14, 2003, the Carrier, by letter, notified the Organization as follows:

"This is a 15-day notice of our intent to contract the following work:

Location: El Paso, TX

Specific Work: Replacement of a gas line damaged during a signal construction project."

The Organization responded by letter dated August 20, 2003, asserting that the work had customarily been assigned to and performed by the Carrier's Maintenance of Way Department, and was also specifically reserved to those employees under the terms of the parties' Agreement. The Organization also contended that the Notice was procedurally defective, vague, and inconsistent with

the requirements of Article IV of the Agreement and the December 11, 1981 Letter of Understanding. In particular, the letter objected that the Notice did not identify the work's scheduled commencement and completion dates, and that it lacked an exact location, the number of employees and work hours contemplated, a specific, complete description of the work to be performed by the outside forces and the reasons for the subcontracting. On August 25, 2003, the Carrier, by letter, confirmed that the parties had held a conference that day during which they discussed the proposed subcontracting, including the Organization's position that the work was reserved to its members and the Carrier's contention that the Carrier had a practice of contracting the work.

Thereafter, the Organization filed the instant claim, asserting that the Carrier had violated various Agreement provisions when it subcontracted Water Service Sub-department work in the El Paso Yard. The claim noted that the subcontractor's employees renewed a gas line, utilizing a backhoe and a trencher, equipment owned by the Carrier or readily available for rental. The claim asserted that the "simple work" could have been performed by Claimants, especially as the work had historically and exclusively been performed by the Water Service Sub-department and the Claimants were fully qualified and available to perform the work.

The Organization presented two statements, one from Claimant Edgar and another from another employee. Claimant Edgar's statement provided, in relevant part:

> "My job was to maintain & service the train way pumps located in the bank . . . On several occations (sic) we (water-service mechanics) would replace & repair the plumbing in the trainway (diesel engine, check valves, motor, etc.). Whenever the trainway pumps failed the water service was responsible to get the pumps repaired & replaced, to get the water out of the trainway or no train traffic could pass through."

The other employee's statement provided:

> "I . . . a water service mechanic worked on the train way pumps in El Paso Texas for several years . . . On Fridays my job was to check, repair, replace, the pumps check valves and motors and diesel engine, under the bank building. The purpose was that the train way would not get full of water and stop all train movement. This was our job for many years."

There is no question in this case, contrary to the situations in numerous cases cited by the Organization, that the Carrier provided a 15-day notice of its intent to subcontract and the parties thereafter discussed the matter in conference. Nevertheless, the Organization asserts that it should prevail because the Notice was defective. We need not decide this issue, however, because the Organization has not met its initial burden of demonstrating that the work in question was arguably scope-covered so as to trigger the Agreement's notice provisions.

While the Organization asserts that the Agreement's scope provisions clearly demonstrate that the parties intended that gas line repair be encompassed within basic water service maintenance and repair work, it is well settled that the Scope Rule is general in character and does not lend support to the Organization's claim to the particular work in question. In addition, the record does not include any evidence that the Organization's members have performed the work in question. The two statements, provided by one Claimant and another Water Service Mechanic, speak to a completely different sort of work and never state that the employees performed the work here in question, that is gas line replacement.

Therefore, the Organization provided only a general assertion, unsupported by any specifics, that the employees had actually performed the disputed work or were otherwise entitled to perform it. Because the Organization failed to present evidence to meet its initial burden of proof, the claim must be denied. (See Third Division Award 36515 and cases cited therein.)

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 26th day of May 2009.