Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 40816
Docket No. MW-40822
10-3-NRAB-00003-090021

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

(Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Chicago &
(North Western Transportation Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned outside forces (Godberson-Smith) to perform Maintenance of Way and Structures Department work (construct concrete box culverts) at Mile Post 175.11 on the Clinton Subdivision near Colo, Iowa beginning on June 25, 2007 and continuing (System File R-0701C-314/1482686 CNW).

(2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper written notice of its intent to contract out the above-referenced work or make a good-faith attempt to reach an understanding concerning such contracting as required by Rule 1(b).

(3) As a consequence of the violations referred to in Part (1) and/or (2) above, Claimants L. Fisher, R. Schoon, D. Fagen, D. Broich, D. Olson, J. Fagen and G. Mathies shall now each be compensated at their applicable rates of pay for an equal and proportionate share of the total straight time and overtime man hours expended by the outside forces in the performance of the aforesaid work beginning June 25, 2007 and continuing."

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.

The instant dispute has some unusual features concerning the notice allegations that warrant comment. The Carrier served notice of its intent to contract out the work in question by letter dated April 13, 2007, which identified itself as ". . . a 15-day notice of our intent to contract . . ." the work. The notice went on to describe the location and nature of the culvert construction work contemplated. The notice concluded by requesting the Organization to contact the applicable Labor Relations representative if the General Chairman desired a conference in connection with the notice.

The Organization responded by letter dated April 20, 2007. In the letter, it raised the question of whether the Carrier's notice was intended to be the notice required by Scope Rule 1(B) because it did not provide certain details about the contemplated work that the Organization contended were required in a proper notice. The Organization's letter went on to request a conference but then, after designating the representative to participate in the conference, the letter attempted to shift the responsibility to the Carrier to contact the Organization's representative. The final sentence of the letter said this: "Contact him for dates and times to conference."

The record does not establish that a conference regarding the notice was ever held. After the claim was filed, the Organization asserted in its October 31, 2007 appeal letter that the Carrier ". . . refused to discuss this work as requested by the

Organization. . . ." In addition, instead of the sentence quoted above, the Organization asserted that the text of the final sentence of its April 20, 2007 letter read as follows:

> "Providing you do not respond to this letter we will recognize you are agreeing with our position and are withdrawing your notice."

The record reveals that the parties did conference the claim on March 19, 2008. Following the conference, the Organization restated its position in a letter dated March 27, 2008. Although the Organization listed six points, none of them preserved the contention that the Carrier refused to conference the notice. Moreover, none of the points continued to advance the Organization's contentions about the mis-stated final sentence of its April 20, 2007 letter.

Regarding the content of a notice, Scope Rule 1(B) says only this:

* * *

> "In the event the Company plans to contract out work because of one of the criteria described herein, it shall notify the General Chairman of the Brotherhood in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than fifteen (15) days prior thereto, except in 'emergency time requirements' cases."

Given the actual text of Scope Rule 1(B) we do not find the content of the Carrier's notice to have been deficient. Generally speaking, it is the conference on the notice that provides the opportunity for the parties to exchange detailed information as appropriate.

The foregoing description of the notice-related facets of the instant dispute also compels the Board to conclude that no violation of the Agreement has been established. The record simply does not portray an accurate and coherent set of considerations to support the Organization's contentions.

Turning to the merits, it is clear that the focus of the dispute arises from the other text of Scope Rule 1(B) which reads, in pertinent part, as follows:

> "Employes included within the scope of this Agreement in the Maintenance of Way and Structures Department shall perform all work in connection with the construction, maintenance, repair and dismantling of tracks, structures and other facilities used in the operation of the Company in the performance of common carrier service on the operating property. This paragraph does not pertain to the abandonment of lines authorized by the Interstate Commerce Commission.
>
> By agreement between the Company and the General Chairman, work as described in the preceding paragraph which is customarily performed by employes described herein, may be let to contractors and be performed by contractor's forces. However, such work may only be contracted provided that special skills not possessed by the Company's employes, special equipment not owned by the Company, or special material available only when applied or installed through supplier, are required; or unless work is such that the Company is not adequately equipped to handle the work; or, time requirements must be met which are beyond the capabilities of Company forces to meet." (Emphasis added)

According to the record, the culvert construction in question was only one of 16 such projects on the Clinton Subdivision alone. While the claim handling correspondence makes many assertions and counter-assertions, the only actual evidence in the record is a statement by the Manager of Bridge Construction. The statement described how the scope of the project was too large for Carrier forces and how those forces could not complete the project. This evidence was not effectively refuted by the Organization.

Given the state of the record thus described, we must conclude that the Organization failed to prove that the Agreement was violated. The claim, therefore, must be denied.

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 15th day of December 2010.