Form 1 **NATIONAL RAILROAD ADJUSTMENT BOARD**
THIRD DIVISION

Award No. 42231
Docket No. MW-42060
15-3-NRAB-00003-120432

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp when award was rendered.

PARTIES TO DISPUTE: **(Brotherhood of Maintenance of Way Employes Division -**
(IBT Rail Conference
(
(Union 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 (KRW Construction) to perform Maintenance of Way work (haul/place material and grade/level parking lot) at the Depot parking lot in Fremont, Nebraska on May 16 and 17, 2011 (System File G-1152U-71/1557713).

(2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper advance notice of its intent to contract out said work and failed to make a good-faith effort to reduce the incidence of contracting out scope covered work and increase the use of its Maintenance of Way forces as required by Rule 52 and the December 11, 1981 National Letter of Agreement.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants R. Schreck, M. Brinkman, R. Jensen and J. Mumm shall now each be compensated for sixteen (16) hours at their respective straight time rates of pay and for four (4) hours at their respective overtime 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.

On July 8, 2011, the Organization filed a claim alleging:

> **"On Monday, May 16, 2011, and Tuesday, May 17, 2011, the Carrier employed a contractor, KRW Construction of Blair, NE, to haul rock, form grade and level the Union Pacific Depot Parking Lot in Fremont, NE. The contractors had two dump trucks with operators hauling in rock and dumping, a grader with operator, and a front end loader with operator who were grading and leveling the parking lot. The contractors accumulated sixteen (16) hours of straight time and four (4) hours of overtime per man to complete the work."**

The Organization contended that the work was scope-covered work under the Agreement, the Carrier had not provided notice of the proposed contracting, and that there was no basis under Rule 52 for the work to be contracted instead of performed by BMWE-represented employees. The Carrier responded that notice was provided on January 31, 2011, and that there was a history of contracting out such work that brought it within Rule 52(b) of the Agreement.

The Carrier's January 31, 2011 notice stated:

> **"Subject: 15-day notice of our intent to contract the following work:**
>
> **Specific Work: Provide equipment support including but not limited to, backhoes, excavators, trucks, on an as-needed basis for Maintenance of Way forces in the performance of their duties.**
>
> **Location: Various locations on the Council Bluffs Service Unit."**

As the Board held in Third Division Award 42225:

"Rule 52 requires the Carrier to give notice of proposed contracting under both Rule 52(a) and Rule 52(b), except under emergency conditions. While the Agreement does not itself explicitly state what a contracting notice must contain, the Parties are not without guidance about the content of such a notice. Pursuant to the Berge-Hopkins letter of December 11, 1981, 'the advance notices shall identify the work to be contracted and the reasons therefor.' The subject being one of perennial dispute between the Parties, the Board has weighed in on the matter of adequate notice in a number of prior Awards.

In Third Division Award 32333, the Board articulated the fundamental purpose of the notice requirement: did the notice give the Organization enough information to take a position on whether the work in issue should be contracted out? Second, did the Parties actually hold a conference to discuss the notice? The latter point is important because a conference is where the Parties can discuss any questions about the notice and the Carrier can clarify and explain any ambiguities. The Parties conferenced this notice on January 31, 2011. However, at the conclusion of the conference, in its February 22, 2011 post-conference letter, the Organization basically said: 'We still don't know what work you intend to contract out, or where, or when, and we continue to object that the notice is inadequate.' In fact, the Carrier had acknowledged during the meeting that it did not know what work would be contracted out and that there were no contracts for such work in force.

The purpose of advance notice under Rule 52 – and it applies to both Rule 52(a) and Rule 52(b) – is, as stated in Award 32333, to give the Organization enough information for it to be able to decide whether it wants to protest the proposed contracting or not. This is a reasonable minimum standard for any notice to meet. Rule 52 provides that upon request, the Carrier and the Organization 'shall meet' for the purpose of making 'a good faith attempt to reach an understanding concerning said contracting.' That purpose is entirely frustrated when the Carrier's notice fails to provide even minimal information about the proposed contracting."

This case is similar in its facts, and the notice in this case suffers from many of the same defects as existed with the notice examined in Award 42225: it is so vague as to be almost meaningless. In its January 31, 2011 notice, the Carrier identified the work to be performed in only the most generic of terms. The notice at issue in Award 42225 indicated that the contracting was being undertaken pursuant to Rule 52(b); the notice in this case failed to specify any reasons for the contracting transaction.

As the Board has previously held, "blanket" notices must still meet the requisite test for a minimum notice: does the notice provide the Organization with enough information so as to enable it to determine whether the work should be contracted out? The answer in this case is "no." This is a sufficiently serious procedural defect as to warrant sustaining the claim in favor of the Organization, with damages payable to the Claimants. The Board is aware that there are prior Awards that deny monetary compensation if there is no loss of compensation for the Claimants. However, failing to provide a remedy for serious violations of the Parties' Agreement undermines the effectiveness of the Agreement; the Claimants are entitled to be compensated as requested in the original claim.

AWARD

Claim sustained.

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 17th day of November 2015.

CARRIER MEMBERS' DISSENT

to

THIRD DIVISION AWARD 42225 - DOCKET MW-42016

and

THIRD DIVISION AWARD 42231 – DOCKET MW-42060

(Referee Andria S. Knapp)

The Majority's conclusions with respect to the contracting notices failed to recognize and respect the precedent set by past Arbitrators. We anticipate that the Majority's ill-advised action will create further turmoil and unwittingly add fuel to BMWE's burning desire to alter the nature of contracting notices that have been historically provided on Union Pacific Railroad Company property. Consequently, we are compelled to register our vigorous dissent so that future readers of these Awards will recognize the injustice that the Majority sanctioned. It goes without saying that no future decision makers should be tempted to reach similar unwarranted conclusions with regard to the adequacy of such notices.

The basis for the Majority's decision to declare the contracting notices in these cases improper was an alleged failure to comply with the terms of Rule 52 and the Berge-Hopkins Letter of Understanding. We must first point out that Rule 52 is devoid of <u>any</u> language regarding what is required to be provided by the Carrier within a notice. This is recognized by the Majority, as evidenced by the fact that the Majority held: "While the Agreement does not itself explicitly state what a contracting notice must contain . . . ."

The Majority then chose to look to the Berge-Hopkins December 11, 1981 Letter of Understanding. However, the Berge-Hopkins letter is not applicable to the matters at hand. The claims were filed under and relied upon the Parties' July 1, 2001 Agreement. Significantly, the Berge-Hopkins letter was <u>not</u> retained in the Parties' Agreement. Rather, the Parties negotiated an alternative path from the Berge-Hopkins letter and brought forward Article XV of the September 26, 1996 National Agreement within Rule 52 when the Agreement was updated on July 1, 2001. Article XV mandates that the amount of contracting out performed by the Carrier must be measured by a ratio and such level maintained. The Berge-Hopkins letter called for a reduction of contracting out. Article XV and the Berge-

Hopkins letter are mutually exclusive. Because the Parties chose to bring forth Article XV into their Agreement, the Berge-Hopkins letter has no application or bearing on the Parties.

Additionally, such general notices have been historically used by the Carrier and have been found as adequate by the Board in the past. See recently rendered Third Division Awards 40810, 40812, 42073, 42076 and 42080. These Awards addressed the same issues under similar facts. The Majority's decision to ignore them will create further unrest, which goes against the purpose of the Railway Labor Act. Award 40810, with Referee Wallin participating, outlined the principle as follows:

> **"Although the Organization alleged the Carrier failed to serve notice and refused to respond to the General Chairman's request for a conference, later correspondence from the Organization nullifies these contentions. The record establishes that the Carrier did serve notice by Service Order No. 36327 dated March 2, 2007. The parties did engage in a conference on the notice on March 14, 2007. Accordingly, on the record before the Board, we must reject the portion of the Organization's claim that alleges a violation of the applicable notice requirements.**
>
> **Turning to the merits of the claim, we do not find the record to establish that the ditching work in question was unusually difficult or peculiar in any manner whatsoever. The notice merely describes the work as follows:**
>
> > **'Specific Work: providing all supervision, labor and equipment necessary for the operation of a ditch cleaner to perform grading and sloping of drainage area near track structures on an 'as needed' basis.'**
>
> **The remainder of the record does not amplify the character of the ditching work beyond the description set forth in the notice."**

Prior arbitral precedent has found the Carrier's general notices as adequate. Nothing in the instant case records gives any rationale to deviate from the previous Awards, which are considered authoritative on the practice, if not stare decisis.

One of the oft-stated purposes of arbitration is to provide consistency in the work place so as to promote harmonious labor/management relations. To ignore and/or cast aside arbitral precedent that has clearly and unmistakably recognized the long-standing practice of providing general notices on this Carrier's property does a disservice to the process and the Parties to these disputes. Without a doubt, the Majority's determinations that the notices were improper are palpably erroneous and cannot be considered as precedent in any future cases. Because they will clearly create unwarranted chaos, we must render this vigorous dissent.

Katherine N. Novak *Michael C. Lesnik*

Katherine N. Novak **Michael C. Lesnik**

November 17, 2015

LABOR MEMBER'S RESPONSE TO
CARRIER MEMBER'S DISSENT
TO
THIRD DIVISION AWARD 42225, DOCKET MW-42016
AND
THIRD DIVISION AWARD 42231, DOCKET MW-42060
(Referee Andria S. Knapp)

Every contention contained in the Carrier's dissent was presented to the Third Division and the Board soundly rejected each and every one of those arguments. Therefore, the Majority's findings must apply in future similar cases where the Carrier attempts to disavow itself from the contractual promises it made to its Maintenance of Way Employes. However, because the Carrier's dissent is so compiled with inaccuracies and misrepresentations of the parties' agreement as well as controlling National Agreement rules, a response was absolutely necessary to rid this issue of any misunderstanding that the Carrier's Dissent may have interjected.

The Carrier's dissent wrongly contends that: (1) Rule 52 is devoid of any language regarding what is required in an advance notification; (2) the December 11, 1981 National Letter of Agreement is not applicable under this Collective Bargaining Agreement; and (3) general notices have been accepted by the Third Division in the past. Each of the Carrier's contentions will be addressed below.

Initially, it is important to understand that both sides acknowledged that controlling National Agreement language was improperly left out of the printing of the July 1, 2001 Agreement and that, unless stated otherwise, all National Agreements applicable to the parties are still in full effect as outlined in the Letter of Understanding dated August 25, 2003. This August 25, 2003 Letter of Understanding is directly relevant here for at least two (2) reasons: (1) it shows that both sides acknowledged that controlling National Agreement language was left out of the July 1, 2001 printing of the Agreement; and (2) its shows both parties mutually agreed to resolve that issue by including the following pertinent language: "*** *unless provided otherwise, nothing contained or omitted within the updated collective bargaining agreement shall amend or nullify any part of the national agreements, which were signed between the parties.*"

August 25, 2003 Letter Of Understanding

The fact that both sides agreed that the July 1, 2001 updated agreement did not properly incorporate the text of all controlling National Agreement Language is established from the Letter of Understanding dated August 25, 2003 signed by former BMWE General Chairman D. Tanner and Union Pacific's former Highest Designated Officer W. Naro. The pertinent part of that Letter of Understanding reads:

> "It was agreed that unless provided otherwise, nothing contained or omitted within the updated collective bargaining agreement shall amend or nullify any part of the national agreements, which were signed between the parties. In case of any inconsistencies or conflict between the collective bargaining agreement and the actual signed agreements, the actual signed agreements shall prevail."

The above is important in light of the Carrier's more recent contention that Section 1 of Article XV of the 1996 National Agreement is proof that the Organization surrendered its rights under the December 11, 1981 National Letter of Agreement. There is no question that the parties inadvertently left out Section 2 of Article XV of the 1996 National Agreement from the printing of the July 1, 2001 updated agreement. However, there can also be no question that Section 2 of Article XV is definitely a part of this agreement as shown by the August 25, 2003 Letter of Understanding. Section 2 of Article XIV reads: "***Existing Rules concerning contracting out applicable to employees covered by this Agreement will remain in full effect***." The Carrier's most recent attempt to disavow itself from the December 11, 1981 National Letter of Agreement is disingenuous and without merit because when the parties agreed to Article XV of the 1996 Agreement, they agreed in Section 2 of Article XV of the 1996 National Agreement that existing rules concerning contracting out would remain in full effect and the December, 11 1981 National Letter of Agreement was a part of the Agreement prior to the 1996 National Agreement.

Rule 52 Alone Requires the Advance Notification To The General Chairman Must Identify Specific Work

While the Neutral Referee correctly relied upon and enforced the Carrier's commitments contained in the December 11, 1981 National Letter of Agreement in this case, there can be no question that the advance notification and conference requirements of Rule 52 in and of themselves mandate that the Carrier identify the specific work it intends to contract out when it notifies the General Chairman of its intent to contract out work. The purpose of Rule 52 is to provide a framework for and facilitate good-faith discussions between the parties in an attempt to reach an understanding concerning the Carrier's intent to contract out. The Organization could never reach an understanding when a Carrier's purported notification could possibly encompass all types of work customarily performed by Maintenance of Way employes over more than a year long period over one thousand miles of Carrier territory. Thus, Rule 52 alone does prohibit the Carrier from providing blanket notification that does not identify specific work, because blanket notices absolutely conflict with the intent and purpose of Rule 52. While this is more than obvious from the plain terms of Rule 52, it is further supported by the findings of Award 14 of Public Law Board (PLB) No. 7099, which involved this agreement and was issued October 31, 2008. The pertinent part of that award held:

> "As we read Rule 52, it is our understanding that this rule requires notice to the General Chairman for *each instance* where the Carrier intends to contract out work customarily performed by Maintenance of Way forces. Given that the purpose of the Rule is to provide a framework for good faith discussions over the Carrier's intention to contract out such work, it makes no sense that the Carrier could satisfy its obligation under Rule 52 with the type of blanket notice it provided to the organization on December 14, 2004. Accordingly, we find and conclude that the Carrier failed to abide by its obligations under Rule 52 prior to assigning the challenged work to Scarcella Brothers Contracting." (Emphasis in original)

Third Division Awards 41052 and 41054 (issued August 23, 2011) reaffirmed the findings from Award 14 of PLB No. 7099. For example, Award 41052, in pertinent part, held:

> "In view of the fact that this is <u>not</u> a case of first impression and there has been no showing that Award 14 was an anomaly, the Board finds and holds that the Carrier did not meet its obligations under Rule 52 when it served a blanket notice on January 10, 2008, before it assigned the transporting work to the outside contractor (Caylor and Gentz) on July 23 and 25, 2008. ***" (Emphasis in original)

The Carrier's contention that it can meet the Rule 52 advance notification requirements by sending out a letter stating it intends to contract out all work customarily performed by Maintenance of Way employes, over a thousand mile territory, over a year long period, is beyond even the lowest standard of reasonableness. That is why, prior arbitration boards have held that Rule 52 alone does prohibit the Carrier from providing blanket notification and in this case, as in prior cases, the Neutral Referee saw through the Carrier's disingenuous positions and sustained the claim.

The December 11, 1981 National Letter Of Agreement Is An Enforceable Agreement Between The Parties

Nearly since its inception, Union Pacific has attempted to use the arbitration process to disavow itself from the promises it made to its Maintenance of Way employes in the December 11, 1981 National Letter of Agreement. One important fact to keep in mind is that not once has Union Pacific been able to point to direct/specific evidence of where the parties have met and decided not to continue the application of the National Letter of Agreement. Instead, each and every Carrier attempt in this regard, is unfounded and based upon a convoluted string of Carrier implications, innuendos and misrepresentations which Union Pacific mixes up depending on which one of its Maintenance of Way Agreements the claim is progressed under. In connection with this Agreement, we point out that on-property Third Division Award 29121 (issued in 1992) was a seminal award addressing this Carrier's initial attempts to disavow itself from the promises it made

in the December 11, 1981 National Letter of Agreement. Award 29121 confronted the issue directly and rejected the Carrier's arguments. The pertinent part of Award 29121 held:

> "This Board does not view the December 11, 1981 letter in the same vein. It has been discussed in scores of our Awards involving this and other carriers. It is not 'simply a dead letter' which can be ignored. The letter, inter alia, stressed good faith efforts to reduce the incidence of subcontracting and increase the use of maintenance of way forces. While it is correct that it was a quid pro quo (the situation in most if not all labor - management accords) being a quid pro quo does not dilute its viability and in the circumstances present here Carrier is not entitled to enjoy the fruits of the bargain without adhering to the assurances of its Chief Negotiator, as memorialized within a formal document attached to and made a part of the 1981 National Agreement.
>
> This record does not demonstrate, in fact it does not hint, that good faith efforts of any type were advanced in a manner the Organization had been assured they would be in the December 11, 1981 letter. Accordingly the Agreement was violated. The Claim will be sustained. Claimants were furloughed painters at the time the work was performed. No special equipment not readily available to Carrier has been shown to have been required to complete the project. Accordingly Claimants are entitled to be compensated for the hours set forth in Part (3) of the Statement of Claim." (Emphasis in original)

Approximately, eleven (11) years after Third Division Award 29121, this Carrier, as well as other carriers, resurrected attempts to remove the December 11, 1981 National Letter of Agreement from the Maintenance of Way Agreements. This was initiated using a letter from former Chairman of the National Carrier's Conference Committee Mr. Allen Fleming, addressed to former BMWE President Mac Fleming dated April 17, 2003. By letter dated May 23, 2003, Former BMWE President Fleming responded to that letter rejecting the carrier's contentions that the December 11, 1981 National Letter of Agreement was no longer an enforceable agreement. It is worthy to note that there was no response to BMWE's May 23, 2003 letter rejecting the National Carrier's Conference Committee's dishonest attempt to free itself from the commitments it made to its employes in the December 11, 1981 National Letter of Agreement. Nonetheless, within a few months after the correspondence between BMWE former President and the National Carrier's Conference Committee, the Union Pacific and the BMWE signed the above-cited August 25, 2003 Letter of Understanding acknowledging that controlling National Agreement language was left out of the printing of the 2001 Agreement. If the Carrier's contentions regarding the viability of the December 11, 1981 National Letter of Agreement had any merit, which it does not, the Carrier would not have entered into the August 25, 2003 Letter of Understanding with the Organization,

that incorporated any National Agreement rules that were omitted in the printing of the July 1, 2001 agreement. Especially, when the August 25, 2003 understanding definitely reaffirms the incorporation of the December 11, 1981 National Letter of Agreement into the July 1, 2001 agreement and especially just a few months after the National Carrier's Conference Committee's April 17, 2003 letter attempting to repudiate the December 11, 1981 National Letter of Agreement.

The August 25, 2003 Letter of Understanding clearly shows that the parties left out important National Agreement Language and that all the pertinent National Agreements were still applicable, regardless of whether those agreements were reproduced in the printing of the July 1, 2001 Agreement. Consequently, inasmuch as the December 11, 1981 National Letter of Agreement on subcontracting is part of the December 11, 1981 National Agreement signed by these parties, that letter is part of the agreement and the fact that it may not have been reproduced in the July 1, 2001 agreement is irrelevant. Union Pacific cannot direct attention to any language in the agreement that provides otherwise. In fact and the most the Carrier can contend is an inconsistency based on the July 1, 2001 agreement which did not reproduce the December 11, 1981 National Letter of Agreement on subcontracting and the parties signing of the 1981 National Agreement which included the December 11, 1981 National Letter of Agreement on subcontracting. Again, the above-cited August 25, 2003 Letter of Understanding stated that: "*** ***In case of any inconsistencies or conflict between the collective bargaining agreement and the actual signed agreements, the actual signed agreements shall prevail.***" Consequently, the December 11, 1981 National Letter of Agreement and the Carrier's assurances to reduce the incidence of subcontracting are definitely a part of the existing agreement between BMWE and Union Pacific.

The Carrier's contentions regarding the applicability of the December 11, 1981 National Letter of Agreement was non-existent for years following the August 25, 2003 Letter of Understanding. But, true to form, the Carrier once again began defending against its December 11, 1981 National Letter of Agreement violations by contending that said letter was no longer applicable under the July 1, 2001 Agreement. Once again, cases had to be progressed to Section 3 Arbitration Boards and the Third Division of the NRAB, yet again rejected Union Pacific's position. All of the documents referenced above were exchanged by these parties in the handling of the claims that resulted in Awards 40923 and 40929. Typical thereof is Award 40923 which, in pertinent part, held:

> "The first question at issue is whether or not the vitality of the December 11, 1981 Letter of Understanding (December 11, 1981 National Letter of Agreement /Hopkins Letter) has expired because expectations by one party or the other may or may not have been realized. There was lengthy dissertation on the subject by the parties which set forth their respective positions. That record indicates that this argument has arisen on several occasions over the life of that Agreement sometimes

> "boiling over into contentious debate. As that debate was waged, Neutrals continued to accept the fact that the Agreement was viable. As an example, Award 13 of Public Law Board No. 7100, involving the same parties to this dispute, issued a decision on March 4, 2009, without dissent by the Carrier, that the December 11, 1981 Letter of Understanding had been violated by the Carrier. Other Awards such as Third Division Awards 29121, 30066, 31015, 36292, 38349 and Award 6 of Public Law Board No. 7099 have also determined that the Agreement applies to this Carrier and on that basis the Board is not persuaded that the December ll, 1981 Letter of Understanding has lost its applicability."

The Carrier must abandon its consistently rejected contention that the December 11, 1981 National Letter of Agreement is not a part of the controlling agreement. The Carrier is required to live up to its promises and assert good-faith efforts to reduce the incidence of subcontracting. The Carrier does not reject the fact that the December 11, 1981 National Letter of Agreement requires the Carrier reduce the incidence of contracting out. In fact, the Carrier member asserts affirmatively in its dissent that the December 11, 1981 National Letter of Agreement does call for a reduction in contracting out. The Carrier member dissent to Awards 42225 and 42231 in pertinent part reads: "*** ***The Berge-Hopkins Letter called for a reduction of contracting out***. ***" (Emphasis added) (Carrier Members' Dissent to Awards 42225 and 42231, Page 1).

Article XV Of The 1996 National Agreement And December 11, 1981 National Letter Of Agreement Are Not Mutually Exclusive

The Carrier's position that its commitments contained in the December 11, 1981 National Letter of Agreement are contrary to Article XV is wrong. The first problem with the Carrier's contention is its misrepresentation of Article XV of the 1996 National Agreement. In this regard, the Carrier asserts in its dissent that:

> "***Article XV mandates that the amount of contracting out performed by the Carrier must be measured by a ratio and such level maintained. ***".

However, Article XV does not require that a level must be maintained. Article XV sets a limitation on the Carrier's use of subcontracting and is perfectly compatible with the Carrier's commitment in the December 11, 1981 National Letter of Agreement. In this regard, the pertinent part of Article XV of the 1996 National Agreement reads:

> "The amount of subcontracting on a carrier measured by the ratio of adjusted engineering department purchased services (such services reduced by costs not related to contracting) to the total engineering department budget for the five-year period 1992-1996, will not be increased without employee protective consequences. In the event that subcontracting increases beyond that level, any employee covered by this Agreement who is furloughed as a direct result of such increased subcontracting shall be provided New York Dock level protection for a dismissed employee, subject to the responsibilities associated with such protection.
>
> **Section 2**
>
> **Existing rules concerning contracting out applicable to employees covered by this Agreement will remain in full effect**."

A plain reading of the rule shows that Article XV of the 1996 National Agreement provides that in the event subcontracting increases beyond the established ratio, employes furloughed as a result of subcontracting will be provided New York Dock (NYD) protections. The rule speaks in terms of limiting the Carrier's contracting out and not an agreement to maintain a level. The Carrier's commitments in the December 11, 1981 National Letter of Agreement to reduce the use of outside forces is perfectly in line with the Carrier's obligations under Article XV of the 1996 National Agreement to not increase subcontracting beyond the established ratio. There can be no question that the December 11, 1981 National Letter of Agreement call for a reduction in the use of outside forces is perfectly harmonious with the Carrier's commitment in Article XV of the 1996 National Agreement not to increase subcontracting above the established ratio.

In further support of the fact is Section 2 of Article XV of the 1996 National Agreement which, in pertinent part, reads:

> "Existing rules concerning contracting out applicable to employees covered by this Agreement will remain in full effect."

This language quoted above clearly indicates that Article XV of the 1996 National Agreement was an added protection in addition to previous rules on contracting and not a replacement of previous rules. Accordingly, any previous contracting out rules, including their side letters of agreement, continue to govern the parties.

The Majority correctly applied the terms of the agreement and the Carrier's zany position that the Majority's findings are an "injustice" to the Carrier is perplexing when the actual facts of the case are considered. With all due respect to the Carrier member, the injustice was and is the

Carrier's attempt to undermine the promises and commitments it made to its Maintenance of Way employes contained in Rule 52 and the December 11, 1981 National Letter of Agreement. Lastly, while the Carrier contends prior precedent has provided it the right to provide blanket notices that do not identify the work the Carrier intends to contract out, those awards are contrary to the clear agreement terms and the intent of the parties.

Respectfully submitted,

Zachary C. Voegel
Labor Member