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

Award No. 45324
Docket No. MW-47978
24-3-NRAB-00003-230454

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

(Brotherhood of Maintenance of Way Employes Division –
(IBT Rail Conference
PARTIES TO DISPUTE: (
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned or otherwise allowed outside forces (Class One Professional Railroad) to perform Maintenance of Way work building panels, removing old panels, spikes, anchors and ties, installing panels, lining panels, spiking bars and performing all associated duties at the Belt Railway of Chicago Clearing East Martin Building on July 21 through August 6, 2021 (System File RI-2104B-802 BRC).

(2) The Agreement was further violated when the Carrier failed to give the General Chairman proper advance notice in writing of its intention to contract out the work referred to in Part (1) above and when it failed to make a good-faith effort to reach an understanding in accordance with Rule 4.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants A. Hernandez, H. Carrillo, D. Cavin and K. Shanhan shall now '* each be compensated for an equal share of all man hours expended by the contractor's employees at their applicable pay of rates (sic).'"**

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 Organization filed the instant claim on behalf of the Claimants, alleging that the Carrier violated controlling Agreement when it assigned or allowed outside forces to perform Maintenance of Way work of building panels, removing old panels, spikes, anchors and ties, installing panels, lining panels, spiking bars and performing all associated duties at a Carrier building on July 21 through August 6, 2021, instead of its own fully qualified employes who normally perform this work. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Agreement reserves the subject work to Maintenance of Way employes, because the subject work customarily is performed by Carrier's Maintenance of Way forces, because the Carrier failed to abide by the notice and meeting provisions of Rule 4 and the December 1981 National Letter of Agreement addressing contracting, and because there is no merit to the Carrier's arguments. The Carrier contends that the instant claim should be denied in its entirety because the claim has no Agreement or factual support, because there is no evidence that the subject work ever has been entitled to Scope Rule protection, and because the Organization has not met its burden of proof.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the record in this case, and we find that the Carrier did not violate the parties' collective bargaining agreement when it failed to give the General Chairman proper advance notice in writing of its intention to contract out work to Class One Professional Railroad in July and August of 2021. In addition, we find that the Carrier did not violate the collective bargaining agreement when it used outside forces to build wheel racks in the July-August 2021 period.

The Organization has presented substantial proof that its members customarily worked on building track panels but did not provide sufficient evidence that the

Organization's members built wheel racks in the past. The Scope Rule in the parties' collective bargaining agreement is a general Scope Rule and nothing specifically states that the Carrier is prohibited from hiring outside forces to build wheel racks. Consequently, the Organization must present sufficient evidence to show that its members have consistently built wheel racks for the Carrier in the past. All of the statements provided by the Organization focused on the members having built track panels in the past but not wheel racks. Although the Organization has argued that the construction of track panels is equivalent to the construction of wheel racks, this Board disagrees. The Carrier has presented sufficient evidence in rebuttal to show that critical components of the construction of wheel racks is different from the construction of panels. Therefore, there was no violation of the Scope Agreement. Since there was no violation of the Scope Agreement, we find that there was no need for the Carrier to give notice to the Organization when it hired the site contractor, Class One Professional Railroad, to perform the work at issue.

For all of the above reasons, this claim 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 23rd day of September 2024.

LABOR MEMBER'S DISSENT
TO
AWARD 45324, DOCKET MW-47978
(Referee Peter Meyers)

The Board's decision to deny this claim is fundamentally flawed in both its reasoning and its application of the Agreement's provisions. The core error lies in the Board's conclusion that the record does not sufficiently demonstrate that the employes build wheel racks. This finding is clearly inconsistent with the facts presented.

It is undisputed that a wheel rack is constructed from the same common materials as track panels — specifically, railroad ties, rail, spikes and anchors. A wheel rack is essentially a type of railroad panel built to store rail car wheels on the Carrier's property. These are materials that Maintenance of Way employes customarily and historically handle in the performance of their duties on the Carrier's property. Therefore, there can be no legitimate dispute that constructing wheel racks is work that falls within the Scope of the Agreement and is historically performed by the Organization's members.

The logic applied by the Board effectively allows the Carrier to circumvent the Scope of the Agreement by merely assigning different names to common railroad equipment. Such reasoning is unacceptable and undermines the integrity of the Agreement.

Given that the work involved in this dispute is clearly customarily performed by the Carrier's Maintenance of Way forces, the Organization was entitled to notice and an opportunity to conference under Rule 4 of the Agreement. However, in this case, the Carrier failed to provide the required notice. Rule 4, derived from Article IV of the May 17, 1968 National Agreement, mandates that the Carrier provide advance written notification of its intention to contract out work at least fifteen (15) days before the transaction. This notification allows the Organization the opportunity to request a conference and enables both parties to engage in good-faith discussions regarding the contracting out of the work.

The proper time and place to assess whether the Carrier's forces could efficiently install the wheel rack panels would have been at such a conference before the work began. Poor planning on the Carrier's part does not justify denying a contractual work opportunity to the Claimants. By failing to follow the established process for discussing and resolving potential disputes concerning the assignment of work, the Carrier deprived the Organization of its contractual rights.

This provision is widely recognized across multiple properties in the industry and has been consistently interpreted by numerous arbitration panels. At a minimum, when the work "arguably" falls within the Scope of the Agreement, the Carrier is obligated to comply with the requirements of Rule 4. This interpretation has been affirmed in Third Division Awards 44121, 44122, 44123, 44124, 44125, 44126, 44127, 44128 and 44129 (Knapp Awards) and Awards 1, 2, 3, 4, 5, 6, 7, 8, 10, 11 and 12 of Public Law Board (PLB) No. 7979 (VanDagens Awards).

In summary, the Board erred in concluding that the Organization failed to meet its burden of proof. The record clearly demonstrates that the construction of wheel racks is within the

customary duties of the Maintenance of Way employes. Therefore, the Carrier was required to provide proper notice and an opportunity to conference under Rule 4. The Board's failure to recognize this critical procedural error, which deprived the Organization of its contractual rights, renders the decision to deny this claim unjust and contrary to the Agreement's clear and unambiguous language.

For these reasons, I must dissent.

Respectfully submitted,

Ross Glorioso
Labor Member