

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILWAY COMPANY

AWARD NO. 61

Carrier File No. 6MWA 91-6-4E

Organization File No. C-91-C100-33

STATEMENT OF CLAIM

1. The Agreement was violated when the Carrier assigned outside forces (Master Maintenance) to perform right of way and yard clean up work (picking up debris, scrap material and trash) at the North Kansas City Yard beginning on March 11, through March 22, 1991.

2. The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intention to contract out said work as required by the Note to Rule 55.

3. As a consequence of the violations referred to in Parts (1) and/or (2) above, furloughed Sectionmen G. M. Cenicerros, D. D. Riedel, R. L. Kepner, S. A. Engle and S. R. Scheerer shall each be allowed eighty (80) hours' pay at the sectionman's straight time rate of pay and they shall each be credited with 10 days toward vacation entitlement.

F I N D I N G S

The Carrier entered into a "trash and debris contract" with Master Maintenance Company on January 1, 1991. The purpose was "to manually clean, gather up and . . . [remove] all trash and debris"

at the North Kansas City rail yard. No advance notice of the contracting was provided to the General Chairman.

In its claim, the Organization stated that employees of the outside concern each worked 80 hours on the task. The Organization contends that "maintenance of road and track work of this character has customarily been performed" by Maintenance of Way forces. Employee statements to this effect were provided by the Organization.

The Carrier states that numerous crafts and classifications have been employed to perform such "clean up" assignments and that the Organization may not therefore claim jurisdiction for such work.

The Board might find the Carrier's position persuasive if this were a dispute as to assignment of the work to other Carrier forces. Such is not the case, since the work was assigned to outside forces. The Organization has demonstrated to the Board's satisfaction that the clean-up work here under review is indeed performed "customarily" (if not to the exclusion of other Carrier employees) by Maintenance of Way forces.

In support of its argument, the Carrier refers to Third Division Award 25276. This denial Award also concerned "picking up scrap material". However, involved therein was the use of a Bantam Crane which "could not be rented without an operator". In addition, the Carrier's Burro Crane was out of service. By contrast, the manual work involved here appears to have required no special equipment or special skills. Other Awards cited by the Carrier

concern the assignment of clean-up work to other Carrier employees and not to outside forces, obviously not the issue here.

As a result, the Carrier improperly failed to give the General Chairman advance notice and further assigned work to a contractor outside of its rights under the Note to Rule 55. The Claimants were all on furlough at the time of the contracting, and the record shows no dispute as to the number of hours worked by outside forces.

A W A R D

Claim sustained. The Carrier is directed to make this Award effective within 30 days of the date of this Award.

*Herbert L. Marx, Jr.*

HERBERT L. MARX, Jr, Chairman and Neutral Member

*Mark J. Schappaugh*

MARK J. SCHAPPAUGH, Employee Member

*D. J. Merrell*

D. J. MERRELL, Carrier Member

NEW YORK, NY

DATED: *March 13, 1945*