

**PUBLIC LAW BOARD NO. 5652**

**PARTIES     )**     **BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**  
**TO           )**  
**DISPUTE    )**     **UNION PACIFIC RAILROAD COMPANY (FORMER MISSOURI**  
                          **PACIFIC RAILROAD COMPANY)**

**STATEMENT OF CLAIM**

1. The agreement was violated when the Carrier assigned outside forces (National Salvage) to knock off and bag rail anchors, cut and load ribbon rail onto a rail train, straight rail switches and general clean up work on the Concordia subdivision on July 18, 19, 20, 25, 26, August 2 and 3, 1990 (Carrier's File 900637 MPR).
- 2 The Carrier also violated Article IV of the May 17, 1968 National Agreement when it failed to furnish the General Chairman with a proper advance written notice of its intention to contract out said work.
3. The Omaha division employes listed below\* shall each be allowed, at their respective rates of pay, eight (8) hours' pay per day at their straight time rates and four (4) hours' pay per day at their overtime rates for July 18, 19, 25, 26, August 2 and 3, 1990.

\* Foremen:  
S. R. Schaefer

J. B. Van Nortwick  
D. B. Wilson  
K. E. Handke

Machine Operators:

G. H. Hill  
C. L. Hollis  
K. S. Williams

Trackmen:

J. W. Moek  
R. D. Smith  
M. F. Petesch  
F. L. Mueseler  
J. S. Horton  
M. H. Hennigh  
M. W. Wilburn  
M. T. White  
R. L. Shorb  
W. E. Juilfs  
E. D. Bonebrake (furloughed)

Welder:

H. D. Gibbs

W/Helper:

S. M. Thomas

**OPINION OF BOARD**

By letter dated March 15, 1990, the Carrier advised the Organization as follows:

This is to advise of the Carrier's intent to solicit bids to cover the removal of track and all appurtenances between M.P. 337.6 (Norkan

Jct., Kansas) and M.P. 403.8 (Vliets, Kansas) on the former portion of the Concordia Branch.

\* \* \*

Conference on March 19, 1990 failed to resolve the Carrier's stated intent to the Organization's satisfaction. This claim followed.

This dispute has already been resolved by the Third Division. *See Third Division Awards 30683, 30687* involving the same notice, but work performed on different dates.

In those awards and in deciding the dispute, the Board denied the contracting portion of the claims. *See Award 30683* ("In these circumstances, many Awards have supported the Carrier's right to contract the work ....").

However, the Board sustained the claims concerning the retention of the track and related equipment for future use by the Carrier. Again, *see Award 30683*:

There is, however, one final aspect which requires review. In this instance, the record is clear that the agreement between the Carrier and the outside contractor calls for the Carriers' retention of a substantial portion of the track and related equipment for transportation to and use in Carrier operations elsewhere. The Carrier has provided no convincing argument that the work of salvaging Carrier property for use elsewhere should not or could not be readily performed by Carrier forces as part of their regular and customary work assignments. Defenses as to

past practice, abandonment, sale of property simply are not convincing as to this portion of the work.

Third Division Award 29873, although involving a different carrier, discusses the difference between work on abandoned track and the carrier's retention of portions of track and equipment.

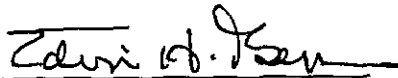
The parties are therefore directed to meet and agree on a reasonable proportion of the hours expended by contractor forces which are applicable to such salvage work (sorting, loading, etc.). The Claim will then be sustained to this portion of the claimed hours. In this instance, the Board concludes that monetary remedy is required for lost work, despite the fact that Claimants were actively on duty at the time.

Third Division Award 30687 "reaches the same conclusions."

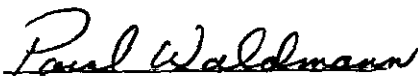
Many of the numerous contracting disputes on this property have been resolved on the basis of awards in prior cases and the requirement of deference to those awards for purposes of stability in the bargaining relationship. *See Award 1* of this Board. We find no reason to deviate in this case from those precedents, particularly when the dispute has already been decided by the Third Division.

**AWARD**

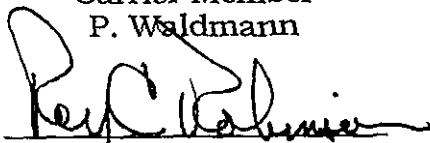
Claim sustained in accord with  
the opinion.



Edwin H. Benn  
Neutral Member



Carrier Member  
P. Waldmann



Organization Member  
R. C. Robinson

Chicago, Illinois

Dated: January 9, 1997