

AWARD NO. 6  
CASE NO. 6

**PUBLIC LAW BOARD NO. 6249**

**PARTIES     )**       **BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**  
**TO            )**  
**DISPUTE     )**       **UNION PACIFIC RAILROAD COMPANY (FORMER SOUTHERN**  
                          **PACIFIC TRANSPORTATION COMPANY (EASTERN LINES))**

**STATEMENT OF CLAIM**

Claim of the System  
Committee of the Brotherhood  
that:

1. The Agreement was violated when the Carrier assigned outside forces (Asplundh Tree Expert Company) to perform Maintenance of Way work (cutting trees and brush on the right of way and between signal poles) beginning at Mile Post 11, Avondale, Louisiana through the Avondale-Schriever Districts, Lafayette and Lake Charles Districts, Mile Post 218.8, Lake Charles, Louisiana on September 20 through October 20, 1995 (System File MW-96-17/BMW 96-47 SPE).

2. The Agreement was violated when the Carrier assigned outside forces (Asplundh Tree Expert Company) to perform Maintenance of Way work (clear, clean, cut and remove vegetation on the Carrier's right of way) along the main line tracks between Mile Posts

280.7 and 353.0 at Beaumont, Texas to the Lafayette Division in Houston, Texas on October 23 through 26, 1995 (System File MW-96-15/BMW 96-36).

3. The Agreement was further violated when the Carrier failed to give the General Chairman proper advance written notice of its intent to contract out said work as required by Article 36 and to attempt to reduce the incidence of contracting out scope covered work as contemplated by the December 11, 1981 Letter of Agreement.

4. As a consequence of the violations referred to in Parts (1) and/or (3) above, Brushcutter Operator H. J. Singleton and Brushcutter Operator Helper R. J. Jack shall each be compensated for one hundred eighty-four (184) hours' pay at their respective straight time rates.

5. As a consequence of the violations referred to in Parts (2) and/or (3) above, Laborer Driver W. S. Alexander and furloughed Laborer W. Keys

shall each be compensated for thirty-two (32) hours' pay at their respective straight time rates.

### **OPINION OF BOARD**

The Organization asserts that the Carrier contracted brush/tree cutting work to an outside contractor (Asplundh) without prior notice in violation of Article 36 and the December 11, 1981 Letter of Agreement. The Carrier defends, in part, on the ground that this dispute has been previously decided in *Third Division Award 31668*.

*Third Division Award 31668* denied a similar claim involving contracting of this type of work to Asplundh and stated, in pertinent part:

Inasmuch as the Carrier has shown that it has contracted with Asplundh for the control of weed and vegetation along its right-of-way since 1986, the Organization has failed to show the work is within the scope of the Agreement.

Two observations are in order.

First, as the Carrier argues, a similar dispute involving the contracting of brush/tree cutting to Asplundh has essentially been previously decided against the Organization. *Third Division Award 31668*.

Second, there is a diversity of opinion amongst the various tri-

bunals hearing these kinds of disputes concerning the application of Article 36 and the 1981 Letter of Agreement. See e.g., *Third Division 26770* (a sustaining award in a brush cutting case between the parties involving Asplundh as the contractor).<sup>1</sup>

A large part of the decision making process is to avoid instability and chaos. Where a specific issue has been previously decided by another board, it is not the function of this Board to overturn that decision because this Board might have ruled differently had the dispute been presented to us as a case of first impression. It is only where the prior decision is palpably in error can this Board refuse to apply the outcome of the prior award.

For the sake of discussion, we can disagree with the conclusion in *Third Division Award 31668* and we can find that the brush/tree cutting work performed by Asplundh was "within the scope of the applicable

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<sup>1</sup> Compare *Third Division Award 31884* (involving the St. Louis Southwestern Railway) where, relying upon *Third Division Award 31668*, the Board stated "[s]urely from 1986 to this claim, if the work Asplundh was performing was in violation of the contract, at sometime someone would have filed claim; but to date, this Board has not been so advised."

schedule agreement" as stated in Article 36 thereby requiring the Carrier to give notice before contracting out that work.<sup>2</sup> For the sake of discussion, we can therefore conclude that *Third Division Award 31668* was erroneously decided.

However, even if we believed *Third Division Award 31668* was decided in

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<sup>2</sup> Article 36 provides:

**ARTICLE 36**  
**CONTRACTING OUT**

In the event this carrier plans to contract out work within the scope of the applicable schedule agreement, the carrier shall notify the General Chairman of the organization involved in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than 15 days prior thereto.

If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the carrier shall promptly meet with him for that purpose. Carrier and organization representatives shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached the carrier may nevertheless proceed with said contracting, and the organization may file and progress claims in connection therewith.

Nothing in this Article shall affect the existing rights of either party in connection with contracting out. Its purpose is to require the carrier to give advance notice and, if requested, to meet with the General Chairman or his representative to discuss and if possible reach an understanding in connection therewith.

error, we cannot find that decision was *palpably* in error so as to cause us to reject the finding of that award. That award reflects a view of some tribunals in this industry. Given the plain language of Article 36 which only requires that the disputed work be "work within the scope of the applicable schedule agreement" and, as further stated in that article, that "[i]ts purpose is to require the carrier to give advance notice and, if requested, to meet with the General Chairman or his representative to discuss and if possible reach an understanding in connection therewith", *Third Division Award 31668* may not be the better reasoned view. However, that award reflects a view held by some in this industry.

What this case comes down to, then, is that while there may be some technical differences, this dispute involving Asplundh is really no different from the dispute decided in *Third Division Award 31668* between the parties. We cannot find that award to be palpably in error. For the sake of stability and to avoid chaos, we must defer to that award.

The claim shall be denied.

**AWARD**

Claim denied.

Edwin H. Benn

Edwin H. Benn  
Neutral Member

W. E. Dero

Carrier Member

H. J. Singleton

Organization Member

Dated: 6-21-02