PUBLIC LAW BOARD NO. 1844

AWARD NO. 39

CASE NO. 21

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

Claim of System Committee of the Brotherhood that:

(1) The Agreement was violated when track maintenance work between Ishpeming and Lake City, Michigan was assigned to outside forces (Carrier's File 81-13-120).

(2) Messrs. V. J. Frossard, A. J. Lippens and R. Tichelaar each be allowed pay at his respective rate of pay (straight time for straight time hours and time and one-half for overtime hours) for an equal proportionate share of the total number of man hours expended by the outside forces in the performance of this work.

OPINION OF BOARD:

As part of its regular main line operation Carrier hauls ore from iron mines in the Menominee Range in the Upper Penninsula of Michigan. The ore is processed into taconite pellets at the mine and loaded into hopper cars in which it is hauled to Carrier's docking facilities at Escanaba, Michigan, where it is transferred to ships for transportation to steel mills. All along the right of way from Partridge, Michigan, to Escanaba, Michigan, there is spillage of the taconite pellets from the tops of the ore cars and from door openings in the bottom of the cars. The taconite pellets are hard, round, about 3/4" in diameter and resemble marbles. At various times over the years Carrier's Maintenance of Way

employees have been used to operate plows and a ballast regulator to spread the pellets out from between the rails and distribute them to the outer ends of the ties when accumulations became too deep.

At the time this claim arose there were several thousand tons of taconite pellets, the accumulation of many years of spillage, on the ground in the yards at Partridge and Escanaba, Michigan, and all along the main line in between. In places these piles were several feet deep. In 1976 Carrier called in a contractor which specialized in the recovery of spilled lading from railroad derailments. That company, J. C. Allen, Inc., devised a method for recovery and recycling of the spilled taconite pellets for resale by the Carrier. Using modified bulldozers, front-end loaders and a specially designed machine for scooping up spillage from between the track and passing it along conveyor belts to trailing ore cars, the outside contractor undertook reclamation of the taconite pellets in May 1976.

On December 6, 1976 the instant claim was filed alleging a violation of Rules 1, 3, and 4 and asserting that Track Department Employees have traditionally performed such work in the past. During further handling on the property the General Chairman also asserted an independent violation of Rule 1 in that the Carrier had not notified him of the contracting out. Carrier defended basically on the ground that the work in question is salvage not maintenance and that it was covered neither by express language or by past practice.

To prevail in cases of this type, the Organization must show that the work in question is covered by the express language of the specifically worded Scope Rule; or that the work is reserved to employees covered by the Agreement because of system-wide past performance of the work by those employees to the exclusion of others. Unless one of those elemental points

is proven then the collateral claim of a violation for failure to give notice and discuss prior to subcontracting has no independent vitality.

We have reviewed the record with care and conclude that the work in question, salvaging iron ore pellets for recycling, does not come within the express coverage of Rule 1. While Maintenance of Way employees have on occasion spread the spillage around as part of their track maintenance duties, that does not give them an enforceable claim to the work of salvaging the spillage. As we read this record the salvage work in question herein is different in kind from track maintenance, albeit there is some overlap in the technology involved. On the basis of the foregoing we must deny the claim.

FINDINGS:

Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;

2. that the Board has jurisdiction over the dispute involved herein; and

3. that the Agreement was not violated.

AWARD

Claim denied.

Dana E. Eischen, Chairman

H. G. Harper, Employee Member

R. W. Schmiege, Carrier Member

Dated: 12/6/78