

Award No. 9

Case No. 9

File No. MW-DEC-75-38

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Co.  
(Formerly Wabash Railroad)

Statement of Claim: A. Carrier violated the Agreement when without prior notice or conference with General Chairman as required by Article IV of the May 17, 1968, National Agreement, Carrier assigned the work of dismantling and removal of the blacksmith shop at Decatur, Illinois, to outside forces; not limited to the rules and articles of the B. M. W. E. Agreement.

B. The following B&B employees welder helpers and machine operators be allowed pay at their respective straight time rate for equal portion shared by outside forces performing the work referred to in the first paragraph of this claim:

<u>B&amp;B Employees</u>	<u>Seniority Date</u>
L. Parker	10-1-74
T. M. Conner	5-8-64
M. G. Bracelin	7-17-72
G. G. Marquis	7-17-72
Wm. Cook	9-6-51
R. B. Stoutenborough	10-9-74
R. J. Moore	10-10-74
B. L. Shingleton	10-10-74
K. T. Bracelin	10-14-74
M. C. Goddard	10-14-74
J. Hendricks	8-10-54
A. L. Tayon	7-17-72
K. C. Deeder	9-1-49
B. D. Buchanan	10-2-72
R. E. Hyll	10-2-72
M. L. Deeder	8-1-73
J. O. Dotson	7-16-73
R. L. Stephenson	2-29-68
B. L. McCoy	1-29-73
S. F. Adams	5-1-73
W. G. Butler	10-16-74

C. C. Smith	10-16-74
G. W. Heiser	1-16-75
R. W. Swindle	11-6-72
J. E. Elsworth	9-23-74
M. Hector	10-16-74
F. C. Miletich	4-19-74
R. E. Shaw	4-19-74
J. L. Shaw	4-24-74
D. A. Ralph	4-30-74

<u>Welder Helpers</u>	<u>Seniority Date</u>	<u>Furloughed</u>
Tim L. Friend	10-21-74	2-14-75
Kent E. Polley	10-7-74	2-14-75
P. D. Waddington	10-27-74	2-14-75
Otha Hull	11-4-74	2-14-75
Gregory Monroe	1-29-75	2-14-75

<u>Machine Operator</u>	<u>Seniority Date</u>	<u>Furloughed</u>
D. E. Johnston	8-28-74	12-2-74

Findings: The Board finds, after hearing upon the whole record and all evidence that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated February 2, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Carrier entered into a contract with the Kaltenback Excavation and Demolition Company of Decatur, Illinois, an outside contractor, to dismantle and remove the Locomotive Blacksmith Shop, a 100' x 300' x 32' steel-framed building located in Decatur, Illinois. D. Kaltenback Company commenced the demolition of the Shop in mid-December 1974, and ended in mid-July 1975. The claims herein were filed on the behalf of the Claimants by the General Chairman on April 9, 1975.

The Employees contend, among other things, that Article IV of the May 17, 1968, National Agreement was violated by Carrier's failure to notify the General Chairman when it contracted the work of demolishing the Decatur Locomotive Shop out; that M & W employees have the required skills and have done this work in the past and examples thereof were furnished; and that the outside contractor only employed a bulldozer operator, a small tractor, endloader, two truck drivers, two dump trucks and two men using a cutting torch in the demolition of the Locomotive Shop. Awards supporting their positions were offered.

Carrier argues that Article IV requires notification only when the work involved comes within the scope of the Agreement; that the Employees failed to cite an agreement rule granting them exclusive right to the work in question; that the Employees failed to prove that they have performed all similar work to the exclusion of all others; that the Shop has been out of operational use for so long as to now be outside the scope of the Agreement; that the Company lacked the necessary equipment and skilled manpower to handle a project of this complexity and magnitude; that the longstanding practice has been to use outside demolition contractors for all major demolition work without objection thereto by the Employees and examples thereof were cited; that no damages were shown and that improper claimants were shown as well as there being an absence of a rule supporting this

aspect of the claim. Awards in support of Carrier's position were placed in evidence.

Article IV of the May 17, 1968 National Agreement provides:

ARTICLE IV - CONTRACTING OUT

"In the event a 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 said contracting transaction, the designated representative of the carrier shall promptly meet with him for that purpose. Said 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 IV shall affect the existing rights of either party in connection with contracting out. It's 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.

Existing rules with respect to contracting out on individual properties may be retained in their entirety in lieu of this rule by an organization giving written notice to the Carrier involved at any time within 90 days after date of this agreement."

The record reflects that demolition work of Company facilities on the predecessor property has been performed by both outside demolition contractors and by Carrier's Maintenance of Way employees. The larger number of such dismantling projects appeared to involve

large jobs and was, as exhibited, performed by outside contractors. Carrier's argument that it has been the practice for some time to remove certain railroad owned buildings when, because of the magnitude of the project it was determined that it was too dangerous or complex for Carrier's employees to handle, is tacit confirmation that in fact the Employees have otherwise performed some dismantling projects. Thus, the ingredients which gave rise to the need and purpose for negotiating Article IV were present.

The record is clear that Carrier did not notify the General Chairman of its intent to contract out the work here in question. The argument that under said Article IV Carrier is not required to give notice "unless the work is within the scope of the applicable schedule agreement" has been previously dealt with. For instance, Third Division Award 19899 (Sickles) states:

"In a long series of Awards, commencing with number 18305 (Dugan), this Board has determined that the contracting out prohibitions of Article IV deal with work which is within the scope of the agreement, but that the Organization is not required in proving a violation of Article IV to show that the work had been performed exclusively."

Thus, as pointed in Third Division Award 20020 (Rubenstein) concerning giving such notice:

"This issue has been dealt with in numerous awards affecting Article IV, invariably holding that failure to give notice is in and by itself a violation of the Agreement, regardless of the Scope rules or exclusivity of work right, and need not be discussed herein."

Public Law Board No. 249, on another part of Carrier's property, in handling a similar claim involving a violation of said Article IV, i.e., lack of timely notice, in its Award No. 16 sustained such claim.

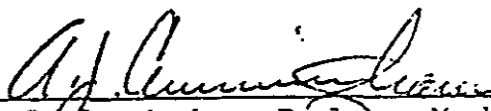
Therefore, in such limited circumstance this Board will follow Third Division Award 18687 (Rimer) wherein it held:

"The Carrier did not provide such notice, having made the judgment that the work involved was not within the Scope of the Agreement. For the limited purpose of providing notice to the General Chairman we find that the Carrier erred in its first judgment and concur with Award 18305 (Dugan) in this regard. See also 18714 (Devine), 18716, 18860; 18968 (Cull); 19056 (Franden); 19153 (Dugan); 19154, 19155, 19191 (O'Brien)."

And it finds that Carrier violated Article IV of the May 17, 1968, National Agreement. However, there is no allegation or showing here that these Claimants suffered any monetary loss and we likewise will follow such Awards in denying that aspect of the Claim.

Award: Part (A) of Claim is sustained  
Part (B) of Claim is denied.

Order: Carrier is directed to make this Award effective on or before October 15, 1977.

  
A. J. Cunningham, Employee Member

  
G. C. Edwards, Carrier Member

  
Arthur T. Van Wart, Chairman and Neutral Member