

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the agreement when it assigned the work of removing its East St. Paul Enginehouse to outside forces (Carrier's File 81-19-146).
- (2) Foreman T. P. Anderson, Assistant Foreman F. Timmers, Machine Operator J.P. McCormick and Carpenters K. Weber and J. Vossen each be allowed pay at his respective straight time rate of pay for an equal proportionate share of the total number of man hours (176) expended by outside forces in the performance of this work.

OPINION OF BOARD:

In March 1976 Carrier's Assistant Chief Engineer-Maintenance notified the Organization's General Chairman of intention to contract out certain work described as follows:

Demolish the Transportation Company's round house at Payne and Bush Streets in East St. Paul Yard area.
The work will include the removal and hauling away of all debris.

Following a conference requested by the General Chairman pursuant to Rule 1(b), Paragraph 3 of the Agreement, Carrier subcontracted the work in question over the objections of the Organization.

In this claim the Organization maintains that the work of dismantling the round house is work expressly covered by the Scope Rule and that there

was sufficient skill, equipment and material available for Carrier to have assigned the work to Maintenance of Way Employees. Carrier resists the claim on both fronts and asserts that demolition is not reserved to Maintenance of Way Employees either by express language or practice and further than it did not have adequate equipment readily available to do the job with Carrier's forces.

Our Award No. 16 sets forth the operative principles despositive of this case. The initial question for consideration is whether the disputed sub-contracted work falls within the express description of work reserved to employees in the Maintenance of Way and Structures Department by Rule 1. The controlling Agreement language reads as follows:

Rule 1 - Scope

(a) The rules contained herein shall govern the hours of service, working conditions and rates of pay for all employees in any and all subdepartments of the Maintenance of Way & Structures Department, (formerly covered by separate agreements with the C&NW, CStPM&O, CGW, FtDDM&S, DM&CI, and MI) represented by the Brotherhood of Maintenance of Way Employees.

(b) Employees included within the scope of this Agreement in the Maintenance of Way and Structures Department shall perform all work in connection with the construction, maintenance, repair and dismantling of tracks, structures and other facilities used in the operation of the Company in the performance of common carrier service on the operating property. This paragraph does not pertain to the abandonment of lines authorized by the Interstate Commerce Commission. (Emphasis added.)

At bottom line the answer to the central question turns upon whether the words "...all work in connection with the...dismantling of...structures" encompasses the tearing down and hauling away of the old round house. Giving those words of description their plain and ordinary meaning, we must conclude that they do clearly and unambiguously cover the work in dispute. Reinforcement for this conclusion is found in the clear language of Rule 3 Classification.

Rule 3 - Classification of Work

* * *

(b) An employee directing the work of men and reporting to officials of the Company shall be classified as a Foreman.

(c) An employee assigned to assist a Foreman or Track Supervisor in the performance of his duties shall be classified as an Assistant Foreman.

* * *

(e) An employee assigned to construction, repair, maintenance or dismantling of buildings, bridges or other structures including the building of concrete forms, etc., shall be classified as a B&B Carpenter.

* * *

(j) An employee qualified and assigned to the operation and servicing of machines used in the performance of Maintenance of Way and Structures Department work shall be classified as a Machine Operator.

Carrier argues that this project involved demolition of the structure with a wrecking ball and therefore cannot be considered dismantling. But the Rule does not address methods and "demolition" is defined as "to pull or tear down (a building, etc.)". Webster's New World Dictionary of the English Language, 1968. We cannot avoid the conclusion that in the context of this case "dismantling" is synonymous with "demolishing". Since the work is covered expressly by the clear contract language we have no recourse to past practice regarding subcontracting of such work. See Award 3-18064.

Carrier has the burden of proving that the subcontracting of Rule-covered work was necessitated under the criteria set forth in Paragraph 2 of Rule 1(b). At best, the record evidence is ambivalent or tends to favor the Organization's assertion that Carrier did have the equipment and manpower but chose to utilize it elsewhere. In that connection we quote from the May 21, 1976 letter of the Assistant Chief Engineering-Administration to the General Chairman:

...As you indicated, we do have certain equipment on the Division we could gather from various places and find qualified personnel to operate this equipment. However, the equipment we do have available is not the type of equipment that can handle such a project efficiently and in a safe manner. The only type end loaders we have are the Pettibone speed swings and they are not the heavy duty type that can be efficiently used on a project such as this.

Cranes required for this project would have to be off-track with a long boom and capable of utilizing a heavy wrecking ball at the end of the boom. Most of the off-track cranes we have on the Division and on the System are bantam cranes and do not have the capacity to handle such a project. We do have one LS-90 crane that would be capable of wielding a wrecking ball; however, it is continuously engaged in doing other work such as picking up and loading rail left on right-of-way from welded rail jobs and normal rail replacements. It is presently programmed to work well into the Winter months. We do have three heavy duty dump trucks assigned to the Twin Cities Division; however, they are located at outlying points and utilized primarily by track forces on a consistent basis. To take these trucks away from the Track Maintenance forces would handicap the track maintenance program. We do have one D-6 dozer with front end loader that is capable of doing certain portions of this type of work, but this machine is busy elsewhere and by itself could not carry out such a project....

Carrier clearly has managerial discretion to deploy its equipment and forces elsewhere on the property but it cannot then rely upon a bootstrapping argument of lack of availability because of such deployment. See Awards 3-13832, 3-15497, 3-21678. The clear and unambiguous contract language requires that this claim be sustained.

FINDINGS:

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

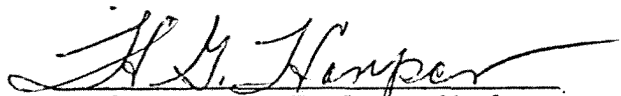
1. that the Carrier and Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act; and

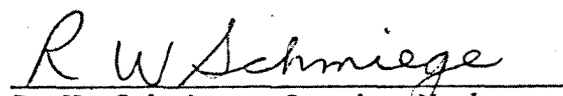
2. that the Board has jurisdiction over the dispute involved herein;
and
3. that the Agreement was violated.

AWARD

Claim sustained.


Dana E. Eischen, Chairman


H. G. Harper, Employee Member


R. W. Schmiede, Carrier Member

Dated: 5/17/79