

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25141  
Docket Number MW-23988

Wesley A. **Wildman**, Referee

(Brotherhood of **Maintenance of Way Employees**  
PARTIES TO DISPUTE: (  
(**Fort** Worth and Denver Railway company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when, without agreement **With** the General Chairman, it assigned excavation and fill work between **Mile** Post 279 and Mile Post 329 and at **Mile** Posts 424 and 490 to outside forces (System File **F-5-80/MS-2**).

(2) Because of the aforesaid violation, the claimants listed below each be allowed pay at their respective rates for an equal proportionate share of the number of man-hours expended by outside forces beginning sixty (**60**) days retroactive from January 22, 1980.

L. D. Swift	J. E. <b>Jackman</b>	M. L. <b>Guyness</b>
C. R. Burns	M. O. <b>Lindley</b>	J. D. <b>Dugger</b>
C. D. Sherman	w. J. <b>McGee</b>	L. <b>Keys</b>
J. J. <b>Tubbs</b>	G. H. Coody	L. Murphy
R. S. Collins	J. D. <b>Scott</b>	D. Block
E. D. Baker	<b>M. L.</b> Benderson	D. W. Flowers
B. D. Diggs	c. M. Beard	<b>B. J. Massey</b>
G. A. Cody	V. T. <b>McKay</b>	R. G. Stanley
E. Motley	J. B. <b>Crowell</b>	R. A. Ponce De Leon
<b>B. J.</b> Sperry	B. <b>E.</b> Bale	J. A. <b>Cruz, Jr.</b>
R. D. Lewis	v. L. iiaqqard	R. D. <b>Watson</b>

OPINION OF BOARD: The Agreement between the parties in **this** case contains the following language (Rule **4(b)**) relating to notice to the Organization when contracting-out is contemplated by the **Carrier**:

\*In the event the Company plans to contract out work... it shall notify the **General** Chairman of the Organization in writing as far in advance of the date of the **contracting** transaction as is practicable and in any event not less than fifteen (**15**) days prior thereto, except in 'emergency time requirements' cases. If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting **transaction**, the designated representative of the Company shall promptly meet with him **for** that purpose. The Company and the Brotherhood **representative** shall make a **good** faith attempt to reach an understanding concerning said contracting, but if no understanding is reached, the company may nevertheless proceed with said **contracting** and the Brotherhood may file and progress claims in connection therewith.\*

Pursuant to and in claimed compliance with this requirement, Carrier sent a notice to the Organization which reads in relevant part as follows:

. . .**The Fort Worth and Denver Railway Company plans** to contract extensive restoration of embankments **and cut sections at various locations between M.P. 0 and N.P. 454, Fort Worth to Texline, Texas, during** the remaining year 1979, and throughout the year 1980.

The **work** will be accomplished by use of **Dumora** grading equipment and superload scrapers, assisted as necessary by related machines. The Railway Company is not adequately equipped to handle the work, therefore, we are requesting the Company be allowed to proceed with contracting **said work**.

May we please have your concurrence to let the **above-described work** to contract as provided by Rule 4 lb)....:

In questioning (on **several grounds**) the propriety of the **contracting-out** which led to this case, the Organization asserts as a threshold matter that what it styles as the **"blanket notice. contained in Carrier's letter** does not (given its lack of specificity regarding the time, place and nature of each individual **"contracting transaction"**) constitute the sort of notice demanded by the Agreement language we have reviewed above.

This same issue, involving the same Carrier and Organization who are parties to this case and the identical Agreement **language** and letter from the Carrier, has, as of this writing, already been the subject of two prior **awards**. In the first of these (Public Law Board **2529--Award 7**) it was held, in concurrence with the position of the Organization, that the Carrier letter did not provide notice of **any specific "contracting transaction"** and that, therefore, with regard to the precisely described **"transaction"** before that Board the so-called **"blanket notice"** fell short of meeting the relevant notice of requirements of **4(b)** of the Agreement. In the second award on this identical issue, (Award No. 24242, Third Division) the Board, finding that the prior Award was not 'clearly erroneous on its **face"** decided the matter **"in a like manner"**.

This Board also, then, concluding that the prior determinations on this issue have merit **and** plausibility and are not **"clearly erroneous"**, **sustains** the position of the Organization that, with regard to the **"contracting transaction"** specified in **the** claim in this case, the notice requirements of **4(b)** were not met adequately by the Carrier.

For the sake of **consistency with** regard to remedy, we also adopt verbatim the claim determination language of the two previous awards, to wit:

Claim for each named claimant is sustained for **wage** loss suffered; i.e., the named claimant's proportionate share of time when added to his straight-time compensable time for period involved shall be limited so as not to exceed the total of his normal compensable time.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds **and** holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction **over** the dispute involved herein; and

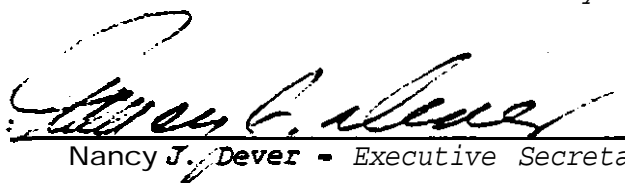
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at **Chicago**, Illinois this 9th day of November 1984.