

PUBLIC LAW BOARD NO. 2529

Joseph Lazar, Referee

AWARD NO. 7
CASE NO. 7

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO) VS.
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 prior written notification to and without written agreement with the General Chairman, it assigned outside forces to perform track and bridge dismantling work, track and culvert construction work and grading work in connection with extending the 'Hedley siding' (System Files F-21-80/MS-2 and F-22-80/MS-2).
- (2) Because of the aforesaid violation, the Bridge and Building Subdepartment and Road Equipment Subdepartment claimants listed below and all claimants listed in the Track Subdepartment Roster, Classes 1, 2 and 3 each be allowed an equal proportionate share of the total number of hours expended by outside forces in performing the work referred to in Part (1) hereof accruing to their respective classes beginning sixty (60) days retroactive from July 21, 1980.

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|-----------------|---------------|---------------|
| L. D. Swift | C. D. Sherman | J. J. Tubbs |
| R. S. Collins | E. D. Baker | B. D. Diggs |
| G. A. Cody | E. Motley | B. J. Sperry |
| R. D. Lewis | J. E. Jackman | M. C. Lindley |
| W. J. McGee | G. H. Coody | J. D. Scott |
| M. L. Henderson | B. E. Hale | R. D. Watson |
| V. L. Haggard | J. D. Dugger | L. E. Murphy |

| | | |
|-----------------|-----------------|----------------|
| B. Block | R. Ponce DeLeon | J. A. Cruz |
| R. R. Rale | H. W. Woodward | W. J. Moss |
| R. C. Stanley | J. E. McKinney | J. V. Downing |
| S. D. Morton | M. T. Gilbert | P. J. DeRidder |
| A. C. Thorn | B. R. McKinney | S. T. Beaudrie |
| L. H. Morris | D. E. Murphy | J. M. McKinney |
| J. L. McMahna | W. J. Chelf | A. S. Alaniz |
| A. L. Price | R. L. Smiley | D. James |
| L. E. Schoffner | R. Rodriguez | M. Rios |
| R. E. Kindle | P. H. Smith | |

FINDINGS: By reason of the Memorandum of Agreement signed November 16, 1979, and upon the whole record and all the evidence, the Board finds that the parties herein are employe and carrier within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction.

At issue here is the interpretation and application of Rule 4 (b) of Agreement, reading:

"Contracting (b): Employees included within the scope of this agreement in the Maintenance of Way and Structures Department perform work in connection with the construction, maintenance or repairs of, and in connection with the dismantling of tracks, structures or facilities located on the right of way and used in the operation of the Company in the performance of common carrier service.

Work as described in the preceding paragraph may not be contracted to outside parties, except by agreement with the Brotherhood, unless special skills not possessed by company employees, special equipment not owned by the company, or special material available only when applied or installed through supplier, are required; or unless work is such that the Company is not adequately equipped to handle the work; or, time requirements must be met which are beyond the capabilities of company forces to meet.

In the event the Company plans to contract out work because of one of the criteria described herein, 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.

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On May 1, 1979, the Company sent a letter to the General Chairman of the Organization, and the letter reads:

"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 M.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 Dumore grading equipment and superload scrapers, assisted as necessary by relative 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(b)."

In concrete and specific terms, Rule 4(b) provides that the Carrier "shall notify the General Chairman of the Organization in writing as far in advance of the date of the contracting transaction" and provides for a "meeting to discuss matters relating to said contracting transaction" which might "reach an understanding concerning said contracting". (underscoring added).

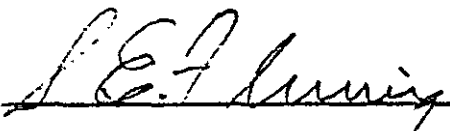
The Carrier's letter of May 1, 1979 is silent concerning "the contracting transaction" in the instant case involving the 'Hedley siding'. A close scrutiny of the evidence of record has been unsuccessful in establishing that the Carrier notified the General Chairman of the Organization of the contracting transaction. In the absence of such notification pursuant to Rule 4(b), the claim must be sustained.

A W A R D

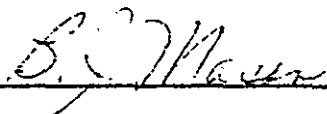
1. The Carrier is in violation of the Agreement.
2. Claim for each named claimant is sustained for wage loss suffered; i.e., the named claimant's proportionate share of time when added to his straight-time compensable time for period involved shall be limited so as not to exceed the total of his normal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



JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER



S. E. FLEMING, EMPLOYEE MEMBER



B. J. MASON, CARRIER MEMBER

DATED: Dec. 16, 1981