

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 33044  
Docket No. CL-33705  
99-3-97-3-110

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(Transportation Communications International Union  
PARTIES TO DISPUTE: (  
(Burlington Northern Railroad

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11685) that:

1. Carrier violated the Schedule Agreement effective December 1, 1980, at Springfield, Missouri, beginning on January 15, 1995, and continuing every day thereafter that Carrier allows and or/requires anyone other than employees covered by the Scope Rule of the above Agreement to perform any duties previously performed by Scope-covered employees in the Purchasing and Material Management Department at Springfield, Missouri, including, but not limited to: locating and ordering materials; handling material requisitions and purchase orders; receipt of materials from vendors; accepting material from vendors; loading and unloading materials; storing materials until needed by using departments; all related record keeping, tracing, correspondence; related data entry work; inventorying; disbursing; supervision, and any other handling as related to Carrier's direct shipment process.
2. Carrier shall now be required to:
  - (a) Return all work to the employees covered by the scope of the BN-TCU Agreement.
  - (b) Compensate the incumbent to Store Foreman Position No. 68021 at the Springfield Material

Department an additional eight (8) hours pay at the pro rata rate of \$125.33 per day.

- (c) Compensate the incumbent to Assistant Store Foreman Position No. 68028 at the Springfield Material Department an additional eight (8) hours pay at the pro rata rate of \$121.59 per day.
- (d) Compensate the incumbent to Crane Operator (Storehelper) Position No. 68460 at the Springfield Material Department an additional eight (8) hours pay at the pro rata rate of \$114.62 per day.
- (e) Compensate the incumbents to Section Stockman No. 68053 and No. 68052 at the Springfield Material Department an additional (8) hours pay at the pro rata rate of \$116.76 per day.
- (f) Compensate the incumbents of Storehelper Position No. 68031 and No. 68442 at the Springfield Material Department an additional eight (8) hours pay at the pro rata rate of \$113.02 per day.
- (g) Compensate the incumbent to Chief Clerk Position No. 68452 at the Springfield Material Department an additional eight (8) hours pay at the pro rata rate of \$125.33 per day.
- (h) Compensate the incumbent to Stock Clerk Position No. 68044 at the Springfield Material Department an additional eight (8) hours pay at the pro rata rate of \$116.76 per day.

The amount claimed is for each day Carrier violates the Agreement as described herein and shall be in addition to all other earnings received by Claimants on these dates and subject to future wage increases.

In the event any of the above referenced positions are abolished, Carrier shall be required to compensate the First Out Qualified and Available GREB employee at the Springfield Material Department eight (8) hours pay at the pro rata rate of the position(s) abolished for each day Carrier violates the Agreement as described herein. If no GREB employees are available on any given date of the violation, claim shall be for the Senior Available Extra List employee on the Springfield Extra List for eight (8) hours pay at the pro rata rate of the abolished position(s) per day. If neither GREB nor Extra List employees are available on any given date, claim shall be for eight (8) hours pay at the punitive rate of the abolished positions(s) for each day Carrier violates the Agreement as described herein."

**FINDINGS:**

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

All material facts in this case are, for the most part, undisputed. At Springfield, Missouri, Carrier, for many years, maintained a Purchasing and Material Management Department ("P&MM Department") that supplied bridge timbers and provided bridge hardware to maintenance crews systemwide. The Springfield P&MM Department was staffed by employees subject to the TCU Agreement. After a bridge project was approved, Engineering Department personnel would submit a material requisition to Springfield, where Clerks would generate appropriate purchase orders. Treated wood products and timbers for a particular bridge project would be ordered from single vendor, Kerr-McGee's Columbus, Mississippi, plant. (Each project requires different design and structural components, requiring different treated wood material.) Kerr-McGee would load a

gondola car with the structural wood ordered, and then ship the car to the Springfield P&MM Department, where it was held until released for the start of the project.

Other hardware needed for the project would be ordered from a variety of different vendors. For example, timber spikes would be ordered from Lewis Bolt and Nut Company; tie pads from Clim-A-Tech Industries; walkway brackets from Acme Structural; bridge signs from Lyle Sign Co.; bridge poles from Paper Calmenson & Co.; Nuts, bolts and washers from Service Supply Co.; Spikes from Birmingham Rail and Locomotive or Industry Railway Supply; and, grip struts were furnished by GS Metals. All of the vendors would ship their product directly to the Springfield P&MM Department, usually by truck, where it was processed by Carrier's employees subject to the TCU Agreement.

Shortly before a particular bridge project was to start the hardware received from the other vendors was collected by Storehouse employees and loaded into the gondola with the treated timbers received from Kerr-McGee, and then shipped to the work site.

On December 14, 1994, Carrier notified the Organization of its intent to transfer certain data entry work from Springfield, Missouri, to the Fort Worth Customer Service Center. Shortly thereafter it changed procedures for securing, storing, and distributing bridge timbers and bridge hardware. Instead of ordering material from several vendors, Carrier began sending one purchase order to GS Metals for all the material needed for a project, except the treated wood which it continued to order from Kerr-McGee. GS Metals would then order necessary items from various vendors, have it shipped to its facility, where it provided the same accounting and handling the P&MM Department previously performed, and then re-shipped the material to Kerr-McGee at Columbus, Mississippi, where it was placed in a gondola with the bridge timbers for the project, and from there, re-shipped to the job site.

The Organization contends that GS Metals and Kerr-McGee took over certain duties and responsibilities of the Springfield P&MM Department, and are now doing the same work that Clerks and Material Handlers at that facility previously performed. This is a violation of its Scope Rule, it is argued. Specifically the Organization says that Carrier entered into a contract with GS Metals that resulted in that vendor acting as a distribution point to order and supply bridge hardware

from other vendors and replace Carrier employees in the performance of that work. Also, Carrier entered into an agreement with Kerr-McGee whereby this vendor's employees would receive and load bridge hardware into a gondola that contained bridge timbers, thus replacing Carrier employees that previously did this work.

Carrier responds that the change in procedures involved in this matter is merely a "direct shipment" situation which now eliminates a "middleman" function previously performed at its Springfield P&MM Department. It argues that Awards rendered on this property have concluded that direct shipments from vendors and elimination of middleman functions are not at odds with the requirements of the parties Scope Rule.

This Board is not persuaded that Carrier's use of GS Metals to acquire supplies from other vendors and then ship such material along with its own material to a third vendor, Kerr-McGee, is an actual "direct shipment" situation, as argued. A direct shipment situation is one where a user of the item, a locomotive or car shop, a maintenance of way department, a bridge or building department, an office, etc., some department or officer with purchasing authority, orders an item from a vendor and has the item or items shipped directly to the site where it is to be used. Direct shipment involves the elimination, altogether, of the storehouse step. Replacement of an existing storehouse step with a vendor operated storehouse step is not a direct shipment situation.

It is manifest that the storehouse step has not been eliminated in the procedures under review in this claim. GS Metals now functions in the same manner as the Springfield P&MM Department functioned previously. It receives a "material list" for a bridge project, just like Springfield used to receive, and goes about securing the items needed for the project from the same vendors that the P&MM Department previously ordered from. When the items on the "shopping list" are received by GS Metals they are prepared for shipment and eventually loaded into the gondola with the bridge timbers supplied by Kerr-McGee. The middleman function was not eliminated, as argued by Carrier. It was only shifted off the property to GS Metals. "Direct shipment" is not involved, as GS Metals ships to a third party, Kerr-McGee, not the final user. GS Metals is now Carriers Material Department for bridge projects.

Carrier has argued that this case should be viewed in the same light as the "White Envelope" case, Award 102, Appendix K Board. It says that under the

"White Envelope" case users went to a local vendor and purchased sledge hammers, flashlights, welding rods, cleaning supplies, paper products, and office supplies, which they formerly ordered from the Stores Department. These vendors, like GS Metals did not manufacture their own stock. They ordered and purchased from someone else the items they resold to Carrier.

Carrier's arguments would carry some persuasion if all that GS Metals was doing was stocking items for resale to Carrier, and then shipping these items to the end user. However, the record is conclusive, GS Metals is doing more, much more. It is doing the very "middleman" function that was eliminated in the case that resulted in Award 102. GS Metals does not simply receive a Carrier purchase order and pull an item off its shelf and ship it to the user. It does the very work that was previously done in Springfield. It receives the purchase order and material list for a particular bridge project. Then it contacts other vendors and orders that material that they previously furnished directly to Carrier. The material is shipped to GS Metals, where it is given the identical handling that it would have been given if it had been shipped to Springfield. GS Metals is now doing work that previously was work performed by employees subject to the Agreement. GS Metals is now a de facto Carrier Stores Department.

The parties Scope Rule has been the center piece of a number of Awards of this and other Boards. In some of these Awards the parties Scope Rule has been discussed at great length. At least one of these Awards traced the development of the current Scope Rule through several series of negotiations. Since the adoption of its latest revision, certain "buzz words" such as "freeze -frame," "adhesive quality," "quantum," etc., have been "coined" in the Awards to describe certain aspects and standards of application applicable on review. And while review of these Awards discloses that on occasion the Organization has prevailed and on occasion the Carrier has prevailed, it may well be that some of the "standards" announced, while well intended, may actually result in a misapplication of the parties Agreement. These decisions will not be revisited in any great detail by this Board as, notwithstanding what some other Boards may have stated the meaning and application of Rule 1, to be, in very simple terms, it states that:

"Work now covered by the scope of this Agreement shall not be removed except by agreement between the parties."

In this case it cannot be disputed that work covered by the Scope of the Agreement at the time the Rule was adopted was removed, without agreement between the parties. Work covered by the Scope of the Agreement was given to GS Metals and also to Kerr-McGee, without agreement of the parties. This work was not eliminated, it was transferred, pure and simple, to strangers to the Agreement. Elimination of a middleman did not occur and direct shipment to the user is not involved. Moreover, the work did not disappear, it continued to be performed by employees of GS Material and employees of Kerr-McGee, after it was no longer performed by employees subject to Scope of the Agreement. The claim has merit. It will be sustained.

With respect to remedy, Carrier has argued that the claim was improperly submitted, it is excessive and that Claimants suffered no monetary damages. Carrier's arguments on this point are not persuasive. This Board has frequently held that no useful purpose would be served if we were to find that the Agreement was violated and no remedy was offered. In this matter substantial elements of work covered by the Agreement was removed and given to strangers, even though Rule 1, fairly read, states that this cannot be done except by agreement. Accordingly, we will award the penalty asked for in the Organization's Statement of Claim.

#### AWARD

Claim sustained.

#### ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of January 1999.