Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37332
Docket No. MW-36272
05-3-00-3-425

The Third Division consisted of the regular members and in addition Referee Nancy F. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned outside forces (Rex Fabrication) to perform routine Maintenance of Way and Structures Department work (repair overhead crane) in the locomotive sanding operations at Hinkle, Oregon on March 8, 9, 10, 11 and 12, 1999 instead of Northwestern District Steel Erection employees S. E. Burgus, R. R. McDonald, D. R. Scoville, R. L. Payne, J. L. Geiss and D. E. Larsen (System file J-9952-76/1191030).

(2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper advance written notice of its intention to contract out said work and failed to make a good-faith effort to reduce the incidence of contracting out scope covered work and increase the use of its Maintenance of Way forces as required by Rule 52 and the December 11, 1981 Letter of Understanding.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants S. E. Burgus, R. R. McDonald, D. R. Scoville, R. L. Payne, J. L. Geiss and D .E. Larsen shall now each be '***allowed at his applicable rate a proportionate share of the total hours, both straight and overtime hours worked by the

contractor doing the work claimed as compensation for loss of work opportunity suffered on March 8, 9, 10, 11 and 12, 1999."

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.

As Third Party in Interest, the International Association of Machinists and Aerospace Workers, the International Brotherhood of Electrical Workers and the Sheet Metal Workers International Association were advised of the pendency of this dispute, but chose not to file a Submission with the Board.

On April 5, 1999, the Organization submitted a claim on behalf of the individuals noted supra, in which the Vice General Chairman asserted that:

> "Carrier violated the Agreement, specifically, but not restricted to Rules 1, 2, 3, 4, 8, 8 Section IV, 15, 19, 20, 22, 52 and letter of understanding dated December 11, 1981, when it failed to assign Bridge and Building Erection forces the work of repairing the damaged overhead crane used in the locomotive sanding operations at Hinkle, OR on March 8-12, 1999. The Carrier assigned said work to outside contractor Rex's Fabrication, hereby denying said Claimants of work and compensation they are entitled to by virtue of their established seniority."

The Vice General Chairman went on to articulate that the contractor used the "same" tools and equipment "normally" used by B&B Steel Erection employees to remove a vertical steel member that acts as a vertical travel guide. Finally, the Vice

General Chairman noted that the Claimants had advised the Organization that B&B Steel Erection employees had done "similar" work in the past and the Carrier could find examples of same on the Northwest District.

In its denial of the claim, the Carrier alleged that it had "customarily and traditionally" utilized contractor forces to perform the type of work disputed herein. The Carrier further alleged that the Organization's contention that such work accrues exclusively to BMWE-represented employees was "simply without substance." The Carrier further maintained that advance notice to the General Chairman was "irrelevant," because the work in dispute does not fall within the scope of the Agreement.

The Carrier went on to maintain that:

> "A review of the facts and circumstances surrounding your claim reveals that the repair of overhead cranes is not work belonging to the BMWE craft. If fabrication was involved, this work would have been traditionally performed by Carrier's Sheet Metal Worker craft. If it was machinist work or electrical work, the Carrier has maintenance employees in the respective crafts to perform this type of work. In reviewing the rules cited, I find no support for your contention."

As noted above, the International Association of Machinists and Aerospace Workers and the International Brotherhood of Electrical Workers and Sheet Metal Workers International Association were given third party notice regarding the dispute. Each of the Organizations declined to respond, but noted, in words or substance, that: "This response is not a disclaimer to the work in dispute and is not intended to be supportive of the position of any party in the dispute."

The Organization maintains that it did not receive appropriate notice. However, the record demonstrates that the Carrier, on October 19, 1998, provided the Organization with notice of its intent to contract out work on new overhead cranes at its Hinkle diesel shop. A conference on the notice took place on November 6, 1998, via telephone, although the Organization contends that the Carrier violated the advance notice provisions because the notice was not "precise" enough. Under the circumstances, we do not agree with the Organization on this procedural point. A review of the on-property correspondence reveals that the Carrier served proper notice regarding its intent to contract out work in connection with overhead cranes at Hinkle

and a conference was properly held, albeit by telephone. Further, there is no evidence that supports the Organization's assertion that said notice was not sufficient enough to comprehend the Carrier's intent regarding the disputed work.

Turning to the merits of the dispute, the initial burden of proof was on the Organization to show that the work in question was reserved by contract language or that members of its craft had historically and customarily performed the work to the practical exclusion of others. The only proof that the Organization proffered in support of its stance that the work had been "customarily and historically" performed by BMWE-represented employees was in the form of a statement from one BMWE member who maintained that: "We have installed overhead crane at the Hinkle Engine House, and we have installed an overhead crane in Portland, OR at the car shop Albina Yard." Even if that unsubstantiated, uncorroborated statement is accurate, it is not sufficient to support the Organization's past practice allegation that Scope Rule-covered employees "historically and customarily" performed the work now in dispute.

Premised upon the foregoing, this claim is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of January 2005.