Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37365
Docket No. MW-36555
05-3-01-3-43

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(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 (Bannock Paving Co. Inc.) to perform Maintenance of Way work (operate graders to repair gravel roads and apply a dust inhibitor) in the Yard at Pocatello, Idaho on November 5 and 6, 1999 (System File J-9952-259/1216005).

(2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper advance written notice of its intention to contract out said work and failed to make a good-faith attempt to reach an understanding concerning such contracting as required by Rule 52(a).

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Roadway Equipment Operators M. J. Dunn and R. R. Olsen shall now each be compensated '***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 November 5 and 6, 1999. Additionally, in an effort to make Claimant whole for all losses suffered, we are also claiming that the Carrier must treat Claimants as employes who rendered service on the days claimed qualifying them for

vacation credit days, railroad 'retirement credits, insurance coverage and any and all other benefits entitlement accrued as if they had performed the work claimed.'"

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.

The Organization submits that on November 5 and 6, 1999, the Carrier assigned Bannock Paving of Pocatello, Idaho, to grading and related work (operate graders to repair gravel roads and apply a dust inhibitor) within Pocatello Yard. It asserts that the contractor's employees accomplished this work (40 hours altogether) using a grader and water truck.

According to the Organization, the work performed by the contractor has customarily and historically been performed by Roadway Equipment Operators and is contractually reserved to them under the provisions of Rules 1, 2, 3, 4, 10, 15 and 19 of the Agreement. The Organization further maintains that the Carrier violated Rule 52(a) of the Agreement and the December 11, 1981 Berge-Hopkins Letter of Understanding when it did not give the General Chairman proper prior written notification of its intent to assign the disputed work to outside forces.

The Carrier argues that the work at issue is not exclusively reserved to BMWE-represented employees, and that a plethora of Awards involving these parties has supported the ability of the Carrier to contract out grading work under Rule 52(b) when, as here, there is evidence in the record that the Carrier served

proper notice and held a conference prior to the work being performed. Furthermore, because the Claimants were fully employed on the claim dates, no monetary remedy is in order.

The Board carefully studied the factual record and the arguments set forth by the parties. As the Carrier pointed out, and as numerous prior Awards of this Board have held, grading and related work has been contracted out by this Carrier with frequency in the past. See Third Division Awards 31721, 31288, 31029, 30210, 30193, 28622, 28619, 27011, 27010 and 20701 as well as Public Law Board No. 5546, Cases 3 and 6. Quoting several of the above Awards in Third Division Award 31652, involving this same issue, the Board stated:

> "Given the practice established on this property for the kind of contracting out involved in this case, there is no basis for determining that these Awards are palpably erroneous. In the *interests (sic) of stability, we shall follow their holdings.*"

The above Awards constitute a well-established line of precedent involving the same parties, Rules and circumstances as here. The pivotal question before the Board, therefore, is whether the Carrier complied with the notice requirements of Rule 52(a) as regards the grading work subcontracted in the current case. Contrary to the position of the Organization, the Board finds that the April 27, 1999 notice was sufficient to meet the advance notice and conference requirements set forth in Rule 52(a). The record reflects that the parties discussed this contracting matter and others during telephone conferences held on May 13 and 17, 1999. In a May 17, 1999 follow-up letter to the General Chairman, the Carrier documented the conferences and supplied additional comments regarding the work planned pursuant to the various contracting service orders discussed by the parties. With respect to Service Order No. 14420, relevant to the grading work at issue here:

> "This notice involves the 'as needed' work of grading maintenance and dust control for yard roads at Pocatello, Idaho. At the time of conference, no contract had been signed on this work with a contractor. It is the Carrier's position that this work is being contracted out due to the lack of equipment on the property. While the Organization asserted that there was a water truck on the 9001

and graders at Green River and Cheyenne, there is no roller/compactor on the property. Furthermore, the water truck and graders are in use and not available on as 'as needed' basis at Pocatello."

Given the above, the Board concludes that proper notice was timely served, and in accordance with the General Chairman's written request of May 3, 1999, the parties subsequently discussed this matter in conference. The Board holds that the notice was not deficient and provided a basis for the parties' discussion of the contracting situation referenced therein. Thus, there is no evidence that the Carrier failed to satisfy the notice and conference requirements, or that the Organization was not given a full opportunity to discuss the contracting work addressed in the above Service Order No. 14420. Similarly, there is no probative evidence to establish that the parties did not engage in a good faith attempt to reach an understanding concerning the contracting.

Thus, in light of the factual record before us and, again, the existence of a well-established line of precedent which consistently has supported this Carrier's right to contract out grading and related work under Rule 52(b) the Board must conclude that the claim should be 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 24th day of February 2005.