PUBLIC LAW BOARD NO. 3888

Parties to the Dispute	BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES vs. MAINE CENTRAL RAILROAD COMPANY	Case No. 6

STATEMENT OF CLAIM

1. The Carrier violated the current Scheduled Agreement, particularly the May 17, 1968 Agreement, when in July 1984, the Carrier contracted out equipment repair work on the MC 6 Ballast Regulator and the MC 155 Crane for a total of 352 hours' work without proper notice to the General Chairman.

2. Equipment Maintainer D. A. Sabins, who was in furlough status and was available and qualified to perform the repair services, should now be compensated for 352 hours at the applicable rate of pay for a work equipment maintainer due to the Carrier's failure to comply with the Agreement.

OPINION OF THE BOARD

There is no dispute that in July 1984, Carrier contracted out equipment repair work on the MC 67 Ballast Regulator and the MC 155 Crane to outside forces in Portland and Bangor, Maine. There is also no

dispute that Carrier did not notify the General Chairman fifteen days in advance in accordance with Article IV of the May 17, 1968 National Agreement and the interpretations and amendments thereto in the December 11, 1981 Letter of Agreement:

> In the event a carrier plans to contract out work within the scope of the applicable agreement, the carrier shall notify the General Chairman of the organization involved in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than 15 days prior thereto.

Carrier argues that this provision of the Agreement does not apply since the Organization is unable to show that the work in question was performed exclusively by members of the craft. There is no requirement, according to Carrier, to discuss something it has been doing for years without objection.

There are, however, two issues here. The first is whether the work has traditionally and customarily been performed by Maintenance of Way employes and the second is whether it has been performed by them to the exclusion of all others. The Rule in question does not say that "In the event a carrier plans to contract out work that falls exclusively within the scope of the applicable agreement...." It is sufficient, for the Rule to become operative, for there to be a simple

showing that repair work on ballast regulators and cranes is normally performed by members of the BMWE. Even if it is later shown that they have not performed the work exclusively, this does not relieve Carrier of the responsibility to provide the General Chairman with timely notice of its intent to subcontract.

In the present case, the record provides sufficient evidence to prove that the work was normally performed by members of the craft. It also shows that it was not done to the exclusion of all others. In the latter regard, in his letter of October 29, 1984, to the Grievant, Engineer of Track D. C. Eldridge cited seven instances between February 1977 and May 1983 during which a ballast regulator and a crane were worked on by outside parties.

The Organization, however, argues that this is the first time that there was a furloughed employe available to do the work. This is an important point. Often Organizations grieve a Carrier's failure to notify a General Chairman of its intent to subcontract only to find that their victory is a hollow one, since its members are all fully employed and under pay and thus compensation is determined to be unwarranted.

The question that Carrier raises in this case is whether the Organization's members have performed this work to the exclusion of all outside contractors (not to the exclusion of all other Carrier employes).

Exclusivity in this sense is not a determining factor in subcontracting cases. The parties must be guided here by the language of Article IV. Under the Agreement, Carrier is required to notify the General Chairman every time subcontracting is anticipated, regardless of whether an outside party has performed the work before. Carrier did not do so in this instance and given the availability of a furloughed employe capable of performing the work, the Organization makes a prima facie case that payment is due.

The parties disagree as to how much compensation is owed and whether the issue was discussed on the property. Carrier offers two bills for 86.3 hours of work that it maintains were provided when the claim arose. The Board sees no evidence to the contrary.

AWARD

Claim sustained. Claimant shall be compensated for 86.3 hours of work done by outside contractors on the MC 67 Ballast Regulator and the MC 155 Crane.

C. H. Gold, Neutral Chairman

R. E. Dinsmore, Carrier Member

W. E. LaRue, Employe Member

8-22-89
Date of Adoption