BEFORE PUBLIC LAW BOARD NO. 5546

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
UNION PACIFIC RAILROAD COMPANY

Case No. 1

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned outside forces (Pasley Construction Company) to perform Bridge and Building Sub-department work (installing two foot [2'] by eight foot [8'] fiberglass sheeting over existing windows) on the Maintenance of Way Repair Shop at Pocatello, Idaho beginning March 11 through April 1, 1992 (System File S-694/920367).

2. The Agreement was further violated when the Carrier failed to make a good-faith attempt to reach an understanding concerning said contracting as required by Rule 52(a).

3. As a consequence of the violations referred to in Parts (1) and/or (2) above, B&B Carpenter T. D. Stalder and furloughed B&B Carpenter W. S. Wallace shall each be allowed one hundred twenty-eight (128) hours' pay at the B&B First Class Carpenter's straight time rate.

FINDINGS:

On January 14, 1992, the Carrier advised the Organization that it intended to contract out repair work that would be performed on the Pocatello Maintenance of Way Repair Shop in Idaho. The Organization raised an objection to the use of an outside contractor and requested a conference.

On February 13, 1992, a conference was held to discuss the Carrier's plans to use an outside contractor to replace and weatherproof the windows at the Pocatello repair shop. The Organization argued that Claimants Wallace and Stalder were "available, fully

qualified and willing to expeditiously perform the B&B work in question". In addition, the Organization contended that under the Scope rules, the work at issue should have been performed by Maintenance of Way employees.

The Carrier argued that both Claimants were fully employed at the time of the work in question and, therefore, did not suffer any loss as a result of the subcontracting. Furthermore, the Carrier argued that this type of work has been traditionally contracted out and "since the work is not Scope covered, Rule 52 does not restrict the right of the Company to subcontract".

On March 11, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30, 31, and April 1, 1992, the Carrier assigned the work to an outside contractor despite the Organization's objections.

The parties not being able to resolve the issues, this matter came before this Board.

This Board has reviewed the procedural argument raised by the Carrier and we find it to be without merit. We find this case is properly before this Board for a ruling on its merits. There is no evidence in the record that the Carrier raised this procedural issue on the property. Moreover, the record does contain a June 11, 1992, letter from the second Vice General Chairman of the Organization rejecting the June 4, 1992 Carrier response to the Claim.

With respect to the substantive dispute, this Board has reviewed the extensive record in this case and we find that the Organization has failed to meet its burden of proof that the Carrier was in violation of the various rules and agreements when it

subcontracted the work in question. Therefore, the claim must be denied.

In this case, there is no question that the Carrier gave the Organization adequate notice on January 14, 1992. Although the Organization complains that the notice was insufficient, this Board disagrees.

In its letter dated January 14, 1992 to the Organization's General Chairman, the Carrier stated in its first paragraph:

> This is to advise of the Carrier's intent to solicit bids to cover the replacement and weatherproof sealing and window covers on the west and east sides of the Pocatello Maintenance of Way Repair Shop.

This Board finds that that notice, which includes an invitation to have a conference over the proposed subcontracting within 15 days, is sufficient to comply with the requirements of Rule 52 of the Agreement.

This Board also finds that the Organization received that notice because it responded to it on January 21, 1992. The Carrier replied to the Organization's response on February 3, 1992, and a conference was held on February 13, 1992.

Although the parties were unable to reach an agreement at the conference, this Board finds that the Carrier acted within its rights when it subcontracted the replacement and weatherproof sealing work. We find that the Carrier has submitted sufficient proof that the same type of work has traditionally been contracted out by the Carrier. It is true that the work is very similar to work that is sometimes performed by members of the Organization. However, the Carrier has a well-known and accepted past-practice of subcontracting and there is no restriction in Rule 52 that prohibits the Carrier from

subcontracting the work involved in this case.

Moreover, the Organization has not shown that it exclusively has performed this type of work in the past. As a matter of fact, the Carrier submitted records of numerous incidents of similar repair work that was performed by subcontractors on Carrier property.

This Board has reviewed the extensive previous decisions of the Third Division relating to subcontracting between these parties, and we must find that based on the evidence submitted in this case, and the principles that have been developed in previous Board awards, the Organization has not made out a sufficient showing of a violation to warrant any relief. We specifically find that in this case, the notice was not incomplete and there was no bad faith bargaining on the Carrier's part.

AWARD

Claim denied.

PETER R. MEYERS
Neutral Member

Carrier Member

DATED: 9/23/94

Organization Member

DATED: 9-30-94