

BEFORE PUBLIC LAW BOARD NO. 5546

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
UNION PACIFIC RAILROAD COMPANY

Case No. 10

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned outside forces (Kats Custom Masonry) to perform Bridge and Building Subdepartment work (removed old brick, installed second-hand brick and work incidental thereto) on the upper west exterior wall of Building B-30, Old Wheel Shop in the Pocatello, Idaho Yard from July 6 through 23, 1992 (System File R-63/920585).
2. The Agreement was violated when the Carrier assigned outside forces to perform Bridge and Building Subdepartment work (installed a 10' by 12' overhead door) at the west entrance of the breezeway located next to Building 30 and the Steel Car Shop at Pocatello, Idaho on July 21, 1992 (System File R-62/920586).
3. 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 their Maintenance of Way forces as required by Rule 52(a) and the December 11, 1981 Letter of Understanding.
4. As a consequence of the violations referred to in Parts (1) and/or (3) above, furloughed B&B Carpenter W. S. Wallace and B&B Carpenter T. D. Stalder shall each be allowed one hundred fifty-six (156) hours' pay at the B&B mason's straight time rate.
5. As a consequence of the violations referred to in Parts (2) and/or (3) above, furloughed B&B Carpenter W. S. Wallace and B&B Carpenter T. D. Stalder shall each be allowed four and one-half (4.5) hours' pay at the B&B First Class Carpenter's straight time rate.

FINDINGS:

On July 6 through 23, 1992, the Carrier hired an outside contractor to perform masonry work on an outside wall of Building B-30 in Pocatello, Idaho.

On July 21, 1992, the Carrier hired an outside contractor to install an overhead door at the west entrance of the breezeway in Pocatello, Idaho.

The Organization took exception to the use of an outside contractor and filed a claim on behalf of the Claimants arguing that this type of work has historically and customarily been performed by B&B carpenters. Furthermore, it argues that the Carrier did not issue notice of intent in a timely fashion.

The Carrier denied the claim contending that the Claimants were assigned to other projects at the time and that notice was given to the Organization.

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

This Board has reviewed the extensive record in this case and we find that the record reveals that the Carrier issued its notice of intent to solicit bids to cover removal and replacement of damaged brick and other related work at the Bearing Room in Pocatello, Idaho on July 6, 1992. In that notice, the Carrier's Assistant Director of Labor Relations indicated that he would be available to conference the proposed subcontracting within 15 days.

The Organization responded to the Carrier's notice on July 14, 1992 with its usual objections. The Carrier replied to that response on August 14, 1992 stating primarily that the work involved had been traditionally contracted out by the Carrier. In that reply the

Carrier's Director of Labor Relations stated again that he would be willing to meet with the Organization representative to discuss the subcontracting.

The record further reveals that the conference did take place on August 19, 1992.

Once again, the problem in this case is that the Carrier assigned the work to the outside contractor on July 21, 1992 to install the electric roll-up door. Also, the Carrier had the masonry work performed July 6, 1992 and July 23, 1992.

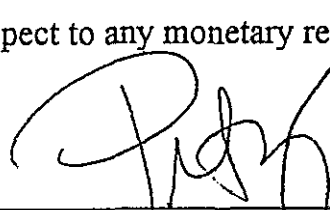
Consequently, the contractually contemplated conference did not take place until long after the work had been completed. That is not what is required of the parties in their Agreement. As stated in the earlier cases before this Board, Rule 52 recognizes the desire on the part of the parties to meet with each other to discuss the proposed subcontracting before it occurs. In this case, the Carrier did not live up to that requirement. This Board, consequently, finds the Carrier in violation of the Agreement and sustains that aspect of the claim.

However, as in some of the earlier cases, this Board is precluded from awarding any monetary relief. There is a long line of cases which precludes this Board from awarding monetary relief unless the Organization can show, with sufficient evidence, that there has been a loss of work opportunity or loss of earnings on the part of the Claimants due to the Carrier's failure to tender the required notice. This Board reminds the Carrier that there is a caveat that may allow the payment of pecuniary relief if the Carrier flagrantly and repeatedly fails to comply with the notice requirements of Rule 52. It is in the interest of both parties to have the notices issued promptly so that discussions over the

subcontracting can take place. This Board has recognized the broad rights of the Carrier to subcontract work. However, the notice requirements and meeting requirements must be followed and cannot be flagrantly ignored.

AWARD:

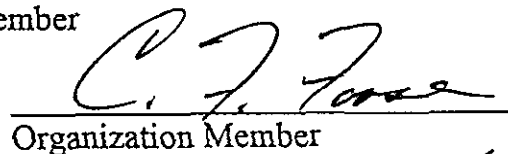
Claim sustained in part. The Carrier violated the Agreement when it did not issue the appropriate notice and meet with the Organization prior to contracting out the work. The claim is denied with respect to any monetary relief.



PETER R. MEYERS
Neutral Member


Carrier Member

DATED: 9/23/94


Organization Member

DATED: 9-30-94