BEFORE PUBLIC LAW BOARD NO. 5546

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
UNION PACIFIC RAILROAD COMPANY

Case No. 12

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned outside forces (Interwest Insulation, Inc.) to perform Bridge and Building Subdepartment work (installed insulation and work incidental thereto) in the breezeway located between the Steel Car Shop and the Store Department Building at Pocatello, Idaho between July 23 through 31 and August 10, 11, 12, and 13, 1992 (System File R-84/920664).

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 their Maintenance of Way forces as required by Rule 52(a) and the December 11, 1981 Letter of Understanding.

3. As consequence of the violations referred to in Parts (1) and/or (2) above, furloughed B&B Carpenter W. S. Wallace and B&B Carpenter T. D. Stalder shall each be allowed one hundred thirteen (113) hours' pay at the B&B First Class Carpenter's straight time rate.

FINDINGS:

On July 3, 1992, the Carrier gave notice to the Organization of its intent to engage an outside contractor to perform work including the installation of insulation in the breezeway between the Steel Car Shop and the Store Department Building at Pocatello, Idaho. The work progressed as scheduled and it was completed on August 13, 1992.

On August 28, 1992, the Organization took exception to the use of the outside contractor and filed a claim arguing that this type of work has historically and customarily been performed by B&B carpenters and therefore, sought compensation for Claimants Wallace and Stalder for work that was denied them. The Carrier denied the claim contending that this type of work has not exclusively been handled by B&B carpenters. Furthermore, it argued that the Claimants were fully employed on other projects at the time of the work in question.

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 Carrier issued a notice to the Organization's General Chairman on July 3, 1992, informing the Organization of the Carrier's intent to solicit bids to cover installation of insulation in the roof panels and walls of the breezeway between the car shop and warehouse in Pocatello, Idaho. In that letter, the Carrier's Assistant Director of Labor Relations states that he will be available to conference the proposed subcontracting within the next 15 days.

The record further reveals that the Organization responded to the Carrier's notice on July 14, 1992. The Organization stated its usual objections to the Carrier's proposed subcontracting action. The Carrier replied on August 14, 1992, stating that the work involved had traditionally been contracted by the Company. The Carrier's Director of Labor Relations also stated that he was still willing to meet with the Organization to discuss the subcontracting notice.

The record reveals that the conference took place on August 19, 1992.

The record in this case further reveals that the work was performed by the Carrier's subcontractor on July 23, 1992. Since the notice was received by the General Chairman on July 10, 1992, only thirteen days were allowed for the conference prior to the beginning of the work. The conference actually did not take place until 27 days after the work started and six days after the work was completed.

The Agreement between the parties contemplates that an early notice will be given to the Organization to enable the Organization and Carrier enough time to discuss the proposed subcontracting. Once again, the Carrier waited until the last minute before it notified the Organization of the work it planned to have performed by non-employees. This Board considers that to be a violation of the rules.

Although this Board realizes that a backpay award may be an excellent incentive to encourage the Carrier to give more prompt notice in the future, this Board must recognize the long line of cases which holds that claimants will not be afforded pecuniary relief where they have not proven a loss of work opportunity or loss of earnings due to the carrier's failure to tend to the required notice. Previous awards have held that if the organization cannot prove that the claimants were not fully employed and suffered monetary loss as a result of the action, then monetary remedy must be denied.

AWARD

Claim sustained in part. The Carrier was in violation of the Agreement because it failed to give the appropriate notice. However, there was no proof that any work had

been lost on the part of the Claimants, so no monetary relief will be awarded.

PETER R. MEYERS
Neutral Member

Carrier Member

DATED: 9/23/94

Organization Member

DATED: 9-30-94