

BEFORE PUBLIC LAW BOARD NO. 5546

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
and  
UNION PACIFIC RAILROAD COMPANY

Case No. 3

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The Carrier violated the Agreement when it assigned an outside contractor (K. F. Jacobsen & Company) to perform Maintenance of Way work (grading and compacting the roadway) between Cleaner Track 5 and Yard Track 1 near the One Spot in the Albina Yard on February 12, 13 and 14, 1992 (System Files S-682/920308 and S-683/920309).
2. The Agreement was further violated when the Carrier failed to timely furnish the General Chairman with a proper advance written notice of its intention to contract out said work or afford the General Chairman a timely meeting to discuss the work referred to in Part (1) above, prior to the contracting out of said work, as contemplated by Rule 52(a).
3. As a result of the violations referred to in Parts (1) and/or (2) above, Roadway Equipment Operator C. F. Barnett shall be allowed twenty-four (24) hours' pay at the REO Class 2 straight time rate and Roadway Equipment Operator R. V. Robinson shall be allowed twenty-four (24) hours' pay at the REO Class 3 straight time rate; or Roadway Equipment Operator B. Fanning shall be allowed forty-eight (48) hours' pay at the REO Class 2 straight time rate; or each of the three (3) Claimants shall be compensated at the applicable REO rate for an equal proportionate share (sixteen (16) hours) of the forty-eight (48) man-hours consumed by the outside forces in the performance of the work in question.

FINDINGS:

On January 14, 1992, the Carrier informed the Organization of its intent to use an outside contractor to do "asphalt paving of 20 foot by 3100 foot service road between

Cleaner Track 5 and Yard Track 1 near the One Spot" in Albina Yard. The Organization responded on January 21, 1992, with a request for a conference. On February 3, 1992, the Carrier agreed to a conference. However, a conference was never held.

On February 12, 13, and 14, 1992, the work in question was performed by an outside contractor using two of its own employees who each worked eight hours each day.

The Organization has taken exception to the use of an outside contractor to perform the work in question contending that Claimants Barnett, Robinson, and Fanning were willing, capable, and available to do the job. It further argues that the Carrier never afforded the Organization a chance for a conference but instead responded to the Organization's request more than six months after the work was completed.

The Carrier argues that the Claimants were fully employed at the time the work in question was to be performed. Furthermore, it argues that "the Union never followed up to arrange a conference date".

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 gave sufficient notice of the proposed subcontracting on January 14, 1992. In that letter signed by Assistant Director Ring, the Carrier informed the Organization's General Chairman that it was going to solicit bids to perform asphalt paving work. The Organization responded to that January 14, 1992, letter on January 21, 1992, with a 31 page letter of its own indicating that the work has "customarily and traditionally been

assigned to and performed by the B&B employees". The Organization's letter then reviewed numerous awards and made its argument in opposition to the proposed subcontracting.

Once again, contrary to the Organization's statements in its submission, the Carrier did respond to the January 21, 1992, letter on February 3, 1992. In that letter, the Carrier stated that the work being proposed "has traditionally been contracted by the Company". The Carrier contends that the rules that the Organization cited in its letters were "classification of work rules" and that those rules were "totally independent of the Scope and contracting rules". However, most importantly, the Carrier states at the end of its three-page letter, "Without waiving the foregoing, I am willing to meet with you in conference to discuss each of these notices. Please arrange to include these cases on the agenda for handling at our next conference on contracting notices. All of your questions concerning the projects can be addressed at that time".

Consequently, this Board must find that the Organization received notice of the proposed subcontracting and it did not follow-up and meet with the Carrier to discuss the Carrier's proposed action. Therefore, the Organization cannot argue that the claim should be sustained because the Carrier violated the notice provisions.

With respect to the work performed by the subcontractor, this Board finds that the Carrier has presented a sufficient evidentiary basis to support the work being assigned to the subcontractors on the dates in question. The records reveal that the Carrier has a substantial past practice of subcontracting that type of work. Also, the records submitted

into evidence indicate that the Claimants were fully employed and worked eight hours on the dates in question.

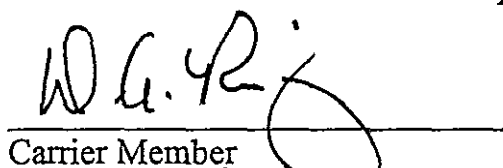
Since the Carrier served an informational notice of its intent to subcontract, and it has an established past practice of subcontracting work such as the work that was done in this case, and the fact that the Carrier did not have its own employees available to perform the work, this Board finds that the Claim must be denied.

AWARD

Claim denied.



PETER R. MEYERS  
Neutral Member

  
Carrier Member

DATED: 9/23/94

  
Organization Member

DATED: 9-30-94