

BEFORE PUBLIC LAW BOARD NO. 5546

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
and  
UNION PACIFIC RAILROAD COMPANY

Case No. 4

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned or otherwise permitted employees of an outside contractor (Brennan Construction Company) to perform Maintenance of Way and Structures Department work of preparing, forming, pouring and finishing of concrete in the construction of a 20' x 60" pad at the north end of the Wheel Shop at 237 E. Day Street, Pocatello, Idaho on May 14 and 15, 1992 (System File R-15/920464).
2. The Agreement was further violated when the Carrier failed to provide proper and timely advance written notice of its intent to contract the specific work involved herein or to hold good-faith discussions prior to the contracting transaction.
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, furloughed Idaho Division First Class B&B Carpenters W. S. Wallace and T. D. Stalder shall each be allowed sixteen (16) hours' pay at their straight time rates and eight (8) hours' pay at their time and one-half rates.

FINDINGS:

On May 14 and 15, 1992, the Carrier hired an outside contractor to pour a 20' x 60' x 6' concrete slab at the north end of the Wheel Shop in Pocatello, Idaho.

The Organization filed the instant claim on behalf of Claimants Wallace and Stalder contending that the Carrier never advised the Organization of its intent to hire an outside contractor to perform the work that the Claimants were capable of doing and had performed in the past. The Organization argues that the notice that the Carrier claims it

served referred to a different size pad located on the "west" side of the Wheel Shop instead of the "north" side where it was finally laid.

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 was in violation of the Agreement when it failed to give proper notice to the Organization of the proposed subcontracting so that the Organization could enter into discussions with the Carrier as contemplated by the Agreement.

The record reveals that on April 16, 1992, the Carrier's Superintendent of Transportation Services gave notice to the Organization's General Chairman of the Carrier's intention to solicit bids to contract out work involving the insulation of a 6' x 55' concrete pad west of the Pocatello Wheel Shop and all associated work in conjunction with the installation. In that notice, the Carrier's representative also stated, "In the event you desire a conference in connection with this notice, all follow-up contacts should be made with the Labor Relations Department".

The record also reveals that the Organization responded to the April 16, 1992 letter on April 27, 1992. In that letter, the Organization's representative objected to the subcontracting of the work for the usual reasons. The Carrier replied to the Organization's response on May 6, 1992 and once again indicated its willingness to conference to discuss the notice. However, the record reveals that the conference to discuss this case of subcontracting did not take place until May 18, 1992. The subcontracting work actually occurred on May 13, 14, and 15, 1992. Obviously, the

conference took place after the work had already been completed.

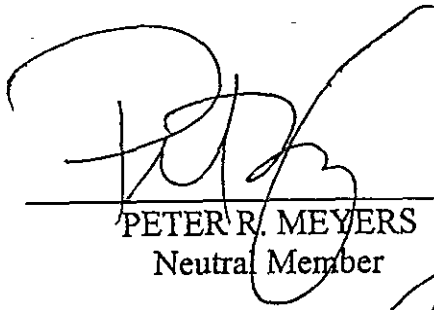
The purpose of the language of the Agreement relating to notice is to afford the parties an opportunity to sit down and discuss the Carrier's proposed subcontracting of work. It is the Organization's goal in those conferences to prevail upon the Carrier to utilize Organization members who are employed by the Carrier to perform the work that the Carrier is considering sending to a subcontractor. If the Carrier does not hold the conference to discuss the proposed subcontracting until after the work has already taken place, the specific language of the Agreement has been violated and the principles behind that language have been frustrated. It would be absolutely fruitless for the Organization to engage in that belated conference.

In this case, since the Carrier did not hold the conference until after the subcontracting work had already been performed, the Carrier was in violation of the rules which require that the conference take place before the work is performed. Given that violation by the Carrier, this Board finds that the Organization members who are named in the claim are entitled to the relief sought. The record reveals that there were a total of 48 hours of work performed by the subcontractor. Therefore, we find that the claim must be sustained.

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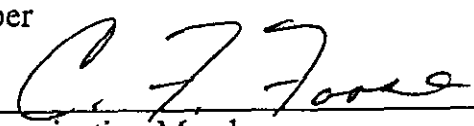
AWARD

Claim sustained.

  
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PETER R. MEYERS  
Neutral Member

  
\_\_\_\_\_  
Carrier Member

DATED: 9/23/94

  
\_\_\_\_\_  
Organization Member

DATED: 9-30-94