

BEFORE PUBLIC LAW BOARD NO. 5546

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
and  
UNION PACIFIC RAILROAD COMPANY

Case No. 5

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 cutting out and removal of existing concrete, preparing, forming, pouring and finishing of concrete in the construction of a 24' x 24' x 6" floor replacement in the Store "Department Warehouse at Pocatello, Idaho on May 13, 14, and 15, 1992 (System File R-14/920465).
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 twenty-eight (28) hours' pay at their straight time rates of pay.

FINDINGS:

On May 13, 14, and 15, 1992, the Carrier hired an outside contractor to remove an existing concrete floor and to pour a 24' x 24' x 6' concrete slab in its place.

The Organization filed the instant claim on behalf of Claimants Wallace and Stalder contending that the Carrier hired an outside contractor to perform the work that the Claimants were capable of doing, work that has been "customarily, historically, and traditionally" been performed by B&B forces. Furthermore, the Organization argues that

although the Carrier served notice on April 28, 1992, of its intent to hire an outside contractor, discussions weren't held until June 8, 1992. Therefore, the Organization argues, the Carrier went ahead and had the work completed before it afforded the Organization the opportunity for a fair and timely conference.

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 did not live up to the requirements of the Agreement because a conference was not held to discuss the proposed subcontracting until after the subcontracting work had been performed. Therefore, the claim must be sustained.

The record in this case reveals that the Organization first received notice of the work to be performed shortly after April 28, 1992. The Carrier, by its Superintendent of Transportation Services, notified the General Chairman of the Organization on April 28, 1992, that the Carrier intended to "replace 23' x 20' x 6" concrete floor and all work associated with replacement and installation of this concrete". In its notice, the Carrier also stated to the Organization representative, "In the event you desire a conference in connection with this notice, all follow-up contact should be with the Labor Relations Department".

The Organization received the notice and promptly responded to it on May 5, 1992. In that 20-page letter, the Organization objected to the subcontracting for the usual reasons. Carrier replied to the Organization's response on June 2, 1992.

The record reveals that a conference to discuss this subcontracting took place on

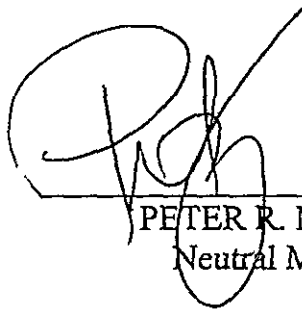
June 8, 1992.

The violation in this case occurred when the Carrier had the work performed by the outside contractor on May 13, 14, and 15, 1992, long before the discussion of the subcontracting took place. The parties' Agreement contemplates that the discussion of the subcontracting will take place in advance of the actual work in order for the Organization to have an opportunity to attempt to convince the Carrier to utilize the Carrier forces that are represented by the Organization. If the Carrier has the work performed by the subcontractor prior to the actual conference, then the terms of the Agreement have been frustrated.

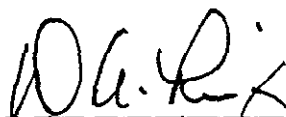
Since the Carrier did not allow a conference to take place prior to the actual work performed by the subcontractor, this Board finds that the Agreement was violated and the claim must be sustained.

AWARD

Claim sustained.



PETER R. MEYERS  
Neutral Member



Carrier Member

DATED: 9/23/94



Organization Member

DATED: 9-30-94