

BEFORE PUBLIC LAW BOARD NO. 5546

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
UNION PACIFIC RAILROAD COMPANY

Case No. 7

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned outside forces (Bloxham Construction) to perform Bridge and Building Subdepartment work (installing panelling over existing paneling) in the conference room at the Store Department Warehouse at Pocatello, Idaho on May 29, June 1, 2, and 3, 1992 (System File R-32/920501).
2. The Agreement was further violated when the Carrier failed to meet the good-faith notice/conference requirements in accordance with Rule 52(a).
3. As consequence of the violations referred to in Parts (1) and/or (2) above, furloughed B&B Carpenter W. S. Wallace shall be allowed thirty-two (32) hours' pay at the B&B First Class Carpenter's straight time rate.

FINDINGS:

On May 29, June 1, 2, and 3, 1992, the Carrier hired an outside contractor to panel the walls in the Store Department conference room. The Carrier contends its reason for hiring outside help was because Carrier carpenters were not available at the time the project was to be performed. Furthermore, the Carrier contends that Carrier carpenters are more accustomed to heavy construction work rather than detail work of the kind involved in this project.

The Organization filed a claim on behalf of Claimant Wallace arguing that the work had already been completed before the Carrier afforded the Organization the

opportunity to discuss the Carrier's intention of contracting out. Furthermore, the Organization contends that the Claimant was "available, fully qualified and willing to expeditiously perform the general B&B carpentry 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 its notice of intention to subcontract work on May 13, 1992. In that notice, the Carrier also informed the Organization's General Chairman that it intended to subcontract some paneling work in offices in Building 34 and the conference room referenced above. Moreover, the Carrier stated to the Organization's representative that if he desired a conference in connection with the notice, he should contact the Labor Relations Department.

On May 19, 1992, the Organization's General Chairman sent a letter objecting to the subcontracting work for the usual reasons. The Carrier then replied to the Organization's response on June 2, 1992, and restated its willingness to meet in conference to discuss the notice.

The record further reveals that the conference between the parties took place on June 8, 1992.

Unfortunately, the record in this case makes it evident that the work was actually performed by the subcontractor on May 29, as well June 1, 2, and 3, 1992, prior to the conference being held the following week.

As this Board has stated on numerous occasions in the past, the purpose of the

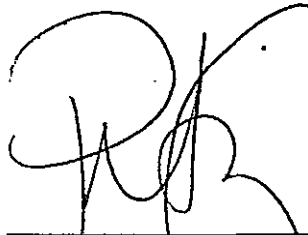
conference is to afford the Organization an opportunity to discuss the proposed subcontracting in an effort to convince the Carrier that its own forces represented by the Organization are capable of and available for the performance of the work. If the conference to discuss the proposed subcontracting takes place after the subcontracting work has already been completed, then the goal of the Agreement that has been reached by the parties is frustrated.

The Organization contends that the only way that the subcontracting restrictions of the Agreement can be enforced is to have claims such as these sustained when the Carrier has not met the notice requirements and fulfilled its responsibility to meet with the Organization prior to actually having the subcontracting work performed. We agree.

Since the Carrier has not lived up to the notice and meeting requirements of the rules as agreed to by the parties, this Board must sustain the claim.

AWARD

Claim sustained.



PETER R. MEYERS
Neutral Member



Carrier Member

DATED: 9/23/94



Organization Member

DATED: 9-30-94