PUBLIC LAW BOARD NO. 6205
AWARD NO. 13
CASE NO. 13

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

PARTIES
TO DISPUTE: and

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned outside forces (Reimon Corporation) to perform Bridge and Building Subdepartment work (preparatory work, setting forms, tieing rebar, pouring and finishing concrete, installing anchor bolts, removing forms and cleanup work) in connection with the construction of the new concrete drip pans within the Cheyenne Wyoming Yard beginning December 2, 1992 and continuing (System File H-30/930319).

(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 a consequence of the violations referred to in Parts (1) and/or (2) above, Group 3 Carpenters P. J. Kern, C. M. Tipsword, R. M. Jackson, R. L. Kinkade and D. N. Fink shall each be allowed an equal proportionate share of the total number of man-hours expended by the outside forces in the performance of the work in question beginning December 2, 1992 and continuing until the violation ceases."

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FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

By notice dated October 9, 1992, Carrier advised the Organization of its intent to solicit bids to cover "construction of a locomotive fueling facility at Cheyenne, Wyoming on the Laramie Subdivision." In its notice Carrier stated that special skills and equipment were required as well as special materials which must be installed by the supplier. Carrier asserted its availability to conference the notice within the next 15 days. By letter dated October 15, 1992, the Organization objected to Carrier's intent to contract the work, relying upon Rules 1 and 8 as reserving the work to employees and referencing prior employee written statements furnished to Carrier in another specified file establishing the fact that employees have customarily performed this type of work and are skilled at doing so. The Organization requested information concerning the special equipment, skills and material needed, as well as the scheduling of a conference prior to the work being performed. Carrier responded on November 2, 1992, and a conference was held on November 13, 1992 without resolution.

In its claim filed on January 19, 1993, the Organization asserts that the work in question is specifically reserved to employees by Rules 1 and 8 of the Agreement, has customarily and historically been performed by them, and that there is nothing unusual about the type of cement work involved which could not have been performed by employees. In its

correspondence on the property, the Organization asserts that a full monetary remedy is appropriate for loss of work opportunity regardless of whether Claimants were fully employed.

Carrier argued throughout the claims processing that the Scope rule was general in nature and did not specifically reserve this type of work to employees under the Agreement. Carrier contends that the claim involves work which is a small part of a major project involving the construction of a locomotive fueling facility, and that it is not required to piecemeal such work. It presented evidence of a past practice of contracting similar type concrete work and relies on prior precedent establishing its right to contract out this work under the "prior existing rights" language in Rule 52(b). Carrier also argues that the claim is excessive since the Organization failed to show that Claimants suffered any loss as a result of the contracting. Finally, Carrier asserts that it fulfilled its notice and conference obligations under Rule 52.

Initially we find that Carrier satisfied its notice and conference obligations in this case. There is no contention that the concrete work involved in this claim was not part of the project covered by the October 9, 1992 notice and November 13, 1992 conference. Thus, as the notice was served over 15 days prior to the contracting and the conference was held some three weeks before the disputed work began, we find that Carrier did not violate its obligations under Rule 52(a) herein.

As noted by this Board in Case No. 6, the ability of Carrier to contract out concrete work on this property has been upheld in Third Division Awards 33420, 32864, 32433, 32309, 32277, 31730, 31284, 31172, 31170, 31039, 31036, 31035, 31028, 31027, 31000, 30689, 30287, 30262, 29310. Given the practice established on this property for the kind of

contracting involved in this case, there is no basis for determining that these Awards are palpably erroneous. Based upon the evidence of past practice established in this record, as well as this prior precedent, we find that the "prior and existing rights and practices" language in Rule 52(b) permits the contracting involved herein.

AWARD:

The claim is denied.

Margo R. Newman
Neutral Chairperson

D. A. Ring
Dominic A. Ring
Carrier Member

Dated:

R. B. Wehrli
Rick B. Wehrli
Employe Member

Dated: 7-5-00